AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

7-10-86
Vol. 51 No. 132
Pages 25027-25186

Federal Register

Thursday
July 10, 1986

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

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

SEATTLE, WA

WHEN: July 22; at 1:30 pm.

WHERE: North Auditorium,
Fourth Floor, Federal Building,
915 2nd Avenue, Seattle, WA.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:

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Rules and Regulations

Federal Register
Vol. 51, No. 132
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection; Grade Standards for Flue-Cured Tobacco

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: These regulations modify the Official Standard Grades for Flue-Cured Tobacco, U.S. Types 11–14 and Foreign Type 92, to more accurately describe tobacco as it presently appears at the marketplace. This modification will: (1) Add definitions to provide adequate descriptions that are significant to the industry; (2) add grades which will more accurately describe whitish-lemon colored and scorched tobacco; and (3) delete certain grades determined to be no longer necessary. These revisions were based on the Department's continuous review and evaluation and in response to recommendations by an Ad Hoc Committee appointed by the Senate Agriculture Committee.

EFFECTIVE DATE: July 10, 1986.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, telephone (202) 447–2567.

SUPPLEMENTARY INFORMATION: A notice was published May 28, 1986, (51 FR 19213) that the Department was considering a modification of the Official Standard Grades for Flue-Cured Tobacco, U.S. Types 11–14 and Foreign Type 92, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

The following modifications were proposed: (1) To add definitions to describe "papery" as a thin-bodied oilless tobacco usually associated with whitish-lemon color in and "excessively scorched" as a lot containing over 50 percent of unripe scorched tobacco; (2) to establish grades X3LL and C5LL to properly describe whitish-lemon color in third quality lugs and fifth quality cutters. In addition, the maturity would be changed to unripe and the leaf structure changed to firm on all whitish-lemon colored grades; (3) to establish grades C4KK, B3KK, B4KK, B5KK and B6KK to distinguish lots containing over 50 percent of unripe scorched tobacco; (4) delete grades C3KM, H3L, H4L, H5L and H6L based on the fact tobacco characteristic of these grades has appeared in insufficient volume to justify retention, and (5) to make editorial changes in the citation of authority.

One comment was received; it supported the proposal as published.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "nonmajor" because they do not meet any of the criteria established for major rules under the Executive Order. Initial review of the regulations contained in 7 CFR Part 29 for need, currentness, clarity, and effectiveness has been completed.

Additionally, in conformance with the provisions of Public Law 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business of this final rule. The changes made by this final rule are minor and technical in nature. The grades added will describe tobacco more accurately. It is not anticipated that this final rule will have any adverse affects. The Administrator, Agricultural Marketing Service, has determined that these actions will have no significant economic impact upon all entities, small or large, and will not substantially affect the normal movement of the commodity in the marketplace.

It is also found and determined that it is impractical, unnecessary, and contrary to the public interest to delay the effective date of the issuance of this rule for 30 days after publication in the **Federal Register**. This final rule is made effective upon publication in order to allow the Commodity Credit Corporation to establish and announce the flue-cured tobacco price supports by grade prior to the opening of the 1986 marketing season.

Therefore, after consideration of comments on the proposal and other relevant information, the Department hereby adopts the regulations as proposed.

Lists of Subjects in 7 CFR Part 29

Administrative practices and procedures, Tobacco.

PART 29—TOBACCO INSPECTION

Accordingly, the Department hereby amends the regulations under the Tobacco Inspection Act contained in 7 CFR Part 29, Subpart C, as follows:

1. The authority citation for 7 CFR Part 29, Subpart C, "Official Standard Grades for Flue-Cured Tobacco (U.S. Types 11, 12, 13, 14, and Foriegn Type 92)" is revised to read as follows:

Authority: Sections 29.1001 to 29.1225 are issued under sec. 14, 49 Stat. 734, as amended (7 U.S.C. 511m); sec. 213, 97 Stat. 1149 (7 U.S.C. 511r).

§ 29.1008 [Amended]

2. Section 29.1008 is amended to add to the end thereof the words "KK-excessively scorched"

§§ 29.1016—29.1047 [Redesignated as §§ 29.1017—29.1048]

3. Current §§ 29.1016 through 29.1047 are redesignated as §§ 29.1017 through 29.1048, respectively.

4. A new § 29.1016 is added to read as follows:

§ 29.1016 Excessively scorched.

As applied to flue-cured tobacco, the combination symbol "KK" when used as the third factor of a grademark denotes that a lot contains over 50 percent of unripe tobacco.

§§ 29.1048—29.1083 [Redsignated as §§29.1050—29.1085]

5. Current §§ 29.1048 through 29.1083 are redesignated as §§ 29.1050 through 29.1085, respectively.

6. A new § 29.1048 is added to read as follows:

§ 29.1048 Papery.

A term used to describe thin-bodied, oilless tobacco usually associated with whitish-lemon color.

§ 29.1122 [Amended]

7. Section 29.1122 is amended to add to the end thereof the sentence "Any lot of unripe tobacco in the C, or B groups which is under 20 percent greenish or green but which contains 50 percent or more of scorched tobacco shall be classified as excessively scorched and designated by the combination symbol "KK."

§ 29.1162 [Amended]

8. Section 29.1162 is amended to add 4 new grades following the grade "B6KM—Poor Quality Variegated Mixed Leaf" to read as follows:

B3KK Good Quality Excessively Scorched Leaf
Unripe, close leaf structure, heavy, normal width, 16 inches (40.6 cm) or over in length. Uniformity, 80 percent; injury tolerance, 15 percent.

B4KK Fair Quality Excessively Scorched Leaf
Unripe, close leaf structure, heavy, normal width. Uniformity, 70 percent; injury tolerance 20 percent, of which not over 5 percent may be waste.

B5KK Low Quality Excessively Scorched Leaf
Unripe, tight leaf structure, heavy, narrow. Uniformity, 70 percent; injury tolerance 30 percent, of which not over 10 percent may be waste.

B6KK Poor Quality Excessively Scorched Leaf
Unripe, tight leaf structure, heavy, stringy. Uniformity, 70 percent; injury tolerance 40 percent, of which not over 20 percent may be waste.

§ 29.1163 [Amended]

9. Section 29.1163 is amended to remove the 4 grades "H3L—Good Quality Lemon Smoking Leaf", "H4L—Fair Quality Lemon Smoking Leaf", "H5L—Low Quality Lemon Smoking Leaf", and "H6L—Poor Quality Lemon Smoking Leaf".

§ 29.1164 [Amended]

10. Section 29.1164 is amended in the paragraph under the heading "C4LL—Fair Quality Whitish-Lemon Cutters" to remove the words "Ripe, open leaf structure, thin" and add in the place thereof the words "Unripe, firm leaf structure, thin (papery)".

11. Section 29.1164 is further amended to add a new grade following the grade "C4LL—Fair Quality Whitish-Lemon Cutters" to read as follows:

C5LL Low Quality Whitish-Lemon Cutters
Unripe, firm leaf structure, thin (papery), lean in oil, normal width, 16 inches (40.6 cm) or over in length. Uniformity, 70 percent; injury tolerance 30 percent, of which not over 10 percent may be waste.

12. Section 29.1164 is further amended to remove the grade "C3KM—Good Quality Variegated Mixed Cutters".

13. Section 29.1164 is further amended to add a new grade following the grade "C4KM—Fair Quality Variegated Mixed Cutters" to read as follows:

C4KK Fair Quality Excessively Scorched Cutters
Unripe, close leaf structure, medium body, normal width, 16 inches (40.6 cm) or over in length. Uniformity, 70 percent; injury tolerance, 20 percent, of which not over 5 percent may be waste.

§ 29.1165 [Amended]

14. Section 29.1165 is amended to add a new grade following the grade "X5L—Low Quality Lemon Lugs" to read as follows:

X3LL Good Quality Whitish-Lemon Lugs
Unripe, firm leaf structure, thin (papery), lean in oil. Uniformity, 70 percent; injury tolerance 40 percent, of which not over 20 percent may be waste.

15. Section 29.1165 is further amended in the paragraph under the heading "X4LL—Fair Quality Whitish-Lemon Lugs" to remove the words "Ripe, open leaf structure, thin" and add in the place thereof the words "Unripe, firm leaf structure, thin (papery)".

§ 29.1181 [Amended]

16. Section 29.1181 is amended as follows:

(a) Change the heading "14 Grades of Smoking Leaf" to read as follows: "10 Grades of Smoking Leaf" and remove the first column of entries reading "H3L, H4L, H5L and H6L".

(b) Change the heading "8 Grades of Variegated Mixed" to read as follows: "7 Grades of Variegated Mixed" and remove the entry "C3KM" from the second column.

(c) Change the heading "2 Grades of Whitish-Lemon" to read as follows: "4 Grades of Whitish-Lemon" and add the new grades "X3LL" above grade "X4LL" and "C5LL" below grade "C4LL".

(d) Following the table "6 Grades of Variegated Red or Scorched" add a new table for the category of excessively scorched grades to read as follows:

"5 Grades of Excessively Scorched
B3KK
B4KK
B5KK
B6KK
C4KK"

§ 29.1225 [Amended]

17. Section 29.1225 is amended under the heading "Combination Symbols", by changing the symbol "FR" to read "FP", and adding the words "KK"—Excessively Scorched" at the end thereof.

Dated: July 8, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-15644 Filed 7-9-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1910

Credit Reports (Individual)

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding credit reports on individuals. The circumstance requiring this action is a change in the method of verifying that the contractor's charges for credit reports are appropriate. The effect of this action is to establish a procedure for verification of credit report charges by the FmHA Finance Office, instead of the FmHA County Office.

EFFECTIVE DATE: July 10, 1986.

FOR FURTHER INFORMATION CONTACT: Ray R. McCracken, Senior Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 382-1486.

SUPPLEMENTARY INFORMATION: The final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. At the present time, FmHA County Office employees are verifying contractor charges for credit report services and submitting the order tickets to the FmHA Finance Office for payment. This action will permit the FmHA Finance Office to verify these charges and relieve most FmHA County Office employees of this responsibility.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary.

The Catalog of Federal Domestic Assistance programs affected by this action are:

10.405 Farm Labor Housing Loans and Grants
10.410 Low Income Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants

10.420 Rural Self-Help Housing Technical Assistance
10.421 Indian Tribes and Tribal Corporation Loans

This action is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this 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. 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1910

Administrative practice and procedure, Credit, Government contracts, Reporting and recordkeeping requirements.

Accordingly, Subpart B of Part 1910, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1910—GENERAL

1. The authority citation for Part 1910 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; 7 CFR 2.70.

Subpart B—Credit Reports (Individual)

2. Section 1910.61 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 1910.61 Collecting fees, invoicing and payments.

* * * * *

(b) * * *

(2) The County Supervisor will review the report and, if acceptable, complete the "Receipt" certification on the order ticket (or insert the phrase "service accepted" on the bottom portion of the order form, date and sign) and forward the order ticket to the Finance Office.

(3) The Finance Office will match order tickets received from the contractor against those received from the FmHA office, verify report charges, and make payment accordingly.

* * * * *

3. In § 1910.61, paragraph (c)(2) is amended by adding at the end of the paragraph the following: "If the credit report or invoice is not acceptable, submit the documentation required in paragraph (d)(2) of this section."

4. In § 1910.61 paragraph (d)(2), is amended in the first sentence by removing between the words "not acceptable" and "the County Supervisor" the following: "and/or the billing data is incorrect."

5. In § 1910.61 paragraph (d)(2)(i) is amended by removing between the words "the credit report" and "and" the following: "and/or for changing the billing data on the order ticket;"

6. In § 1910.61 paragraph (d)(2)(iii) is amended by removing the words "corrected billing data" and inserting in their place the words "the credit report."

Dated: June 20, 1986.

Dwight O. Calhoun,

Acting Administrator, Farmers Home Administration.

[FR Doc. 86–15573 Filed 7–9–86; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 86–065]

Ports Designated for Exportation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the "Inspection and Handling of Livestock for Exportation" regulations by adding Wilmington, Ohio, to the list of ports designated as ports of embarkation and by adding the Airborne Express Animal Export Facility as the export inspection facility for that port. The effect of the amendment is to add an additional port through which animals may be exported. The amendment is necessary because it has been determined that the export inspection facility of the Airborne Export Animal Export Facility for the port at Wilmington meets the requirements of the regulations for inclusion in the list of export inspection facilities.

EFFECTIVE DATE: Effective date is July 10, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Mark P. Dulin, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 805, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8499.

SUPPLEMENTARY INFORMATION:

Background

An interim rule published in the **Federal Register** on April 9, 1986 (51 FR 12121–12122) amended § 91.14 by adding Wilmington, Ohio, to the list of ports designated as ports of embarkation and by adding the Airborne Express Animal Export Facility as the export inspection facility for that port.

The interim rule was made effective on April 9, 1986. Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of April 9, 1986, still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This rule has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have 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.

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

It is anticipated that, compared with the total number of animals exported annually from the United States, less than one precent of the total number of animals will be exported annually through the port of Wilmington, Ohio.

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Humane animal handling, Livestock and livestock products, Transportation.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Accordingly, the interim rule amending 9 CFR Part 91 which was published at 51 FR 12121–12122 on April 9, 1986, is adopted as a final rule.

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, DC, this 1st day of July 1986.

Arthur E. Hall,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–15533 Filed 7–9–85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 24255; Amdt. 93-53]

Suspension of Special Air Traffic Rules for Airpark-Dallas Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Subpart L of Part 93 of the Federal Aviation Regulations (FAR) as a result of the year long evaluation which revealed that the rule is no longer needed or desired. Affected operations will be covered by the appropriate provisions of Part 91, General Operating Rules.

EFFECTIVE DATE: July 15, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch, ATO–230, Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Office of the Associate Administrator for Air Traffic, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–8626.

SUPPLEMENTARY INFORMATION:

History

On April 1, 1985, the FAA issued Special Federal Aviation Regulation (SFAR) No. 48 (50 FR 16698, April 29, 1985) for the temporary suspension of Subpart L of Part 93 for a 1-year test period to conduct an evaluation of the continued need for that rule. Interested persons were invited to participate in the operational evaluation by submitting such written data, views, or arguments as they desired. No comments objecting to the revocation of Subpart L were received. This evaluation revealed that the rule serves little if any useful purpose and is no longer needed or desired by air traffic control or by users.

The Rule

In consideration of the foregoing, the FAA is confident that the provisions of Part 91 and the traffic patterns ulitized at Airpark-Dallas Airport will continue to provide an adequate level of safety with respect to the Addison Airport Traffic Area. Therefore, this action revokes the special air traffic rules and communication requirements for Airpark-Dallas Airport in FAR Part 93, Subpart L. Affected operations are covered by the appropriate provisions of FAR Part 91, General Operating Rules. This matter was preceded by a Notice of Proposed Rulemaking (49 FR 38295, September 28, 1984). Also, the SFAR which temporarily suspended Subpart L of Part 93 for a year long evaluation included a request for comments. No comments objecting to the proposed Subpart L revocation were received on either document. Because SFAR 48 expired on April 29, 1986, I find that good cause exists for making this final rule effective less than 30 days after its publication to minimize the discontinuity in the air traffic rules applicable to Airpark-Dallas Airport.

Regulatory Flexibility Determination

The FAA has determined 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) 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, 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 93

Airport traffic area, Traffic patterns.

The Amendment

PART 93—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 93 of the Federal Aviation Regulations (14 CFR Part 93) is amended as follows:

1. The authority citation for Part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

Subpart L (§§ 93.141–93.145) [Removed]

2. Subpart L is removed.

Issued in Washington, DC, on July 3, 1986.

Donald D. Engen,

Administrator.

[FR Doc. 86–15568 Filed 7–9–86; 8:45 am]

BILLING CODE 4910-13-M

DELAWARE RIVER BASIN COMMISSION

18 CFR Parts 410 and 430

Amendment of Comprehensive Plan, Water Code of the Delaware River Basin and Ground Water Protected Area Regulations for Southeastern Pennsylvania

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its June 25, 1986 business meeting the Delaware River Basin Commission amended its Comprehensive Plan and Article 2 of the Water Code in relation to source metering of surface and ground water withdrawals exceeding 100,000 gpd during any 30-day period. At the same meeting, the Commission amended its Ground Water Protected Area Regulations for Southeastern Pennsylvania in relation to metering of ground water withdrawals exceeding 10,000 gpd during any 30-day period. The amendments require metering or measuring, recording and reporting of withdrawals to designated State agencies. Exempt water uses are specified in the regulations, as are minimum measurement performance standards and recording requirements.

EFFECTIVE DATE: January 1, 1987.

ADDRESS: Copies of the Commission's Water Code and Ground Water Protected Area Regulations for Southeastern Pennsylvania are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Deleware River Basin Commission: Telephone (609) 883–9500.

SUPPLEMENTARY INFORMATION: The Commission held hearings on these amendments on November 26, 1985, March 6, 1986 and March 26, 1986 as noticed in the October 16, 1985 and

February 13, 1986 issues of the **Federal Register**. Based upon testimony received and further deliberation, the Commission has amended its Comprehensive Plan, Water Code and Ground Water Protected Area Regulations for Southeastern Pennsylvania.

List of Subjects

18 CFR Part 410

Water pollution control.

18 CFR Part 430

Water supply.

PART 410—[AMENDED]

1. The authority citation for 18 CFR Part 410 continues to read as follows:

Authority: Delaware River Basin Compact (75 Stat. 688).

2. The Commission's Comprehensive Plan and Article 2 of the *Water Code of the Delaware River Basin* which are referenced in 18 CFR Part 410 are amended by the addition of a new subsection 2.50.2, to read as follows:

2.50.2 *Source metering, recording and reporting.*

(1) Each person, firm, corporation, or other entity whose cumulative daily average withdrawal(s) from the surface and/or ground waters of the Basin from any surface water intake, spring, or well, or any combination of surface water intakes, springs, or wells operated as a system, exceeds 100,000 gallons per day during any 30-day period shall meter or measure and record their withdrawals and report such withdrawals to the designated agency of the state where the withdrawals are located. Withdrawals shall be measured by means of an automatic continuous recording device, flow meter, or other method, and shall be measured to within five percent of actual flow. Exception to the five percent performance standard, but no greater than ten percent, may be granted for surface water withdrawals by the designated state agency if maintenance of the five percent performance standard is not technically feasible or economically practicable. Meters or other methods of measurement shall be subject to approval and inspection by the designated state agency as to type, method, installation, maintenance, calibration, reading, and accuracy. Withdrawals shall at a minimum be recorded on a daily basis for public water supply use and on a biweekly basis for all other water uses, and reported as monthly totals annually. More frequent recording or reporting may be required by the designated state agency or the Commission.

(2) The following water uses and operations are exempt from the metering or measurement requirements of subsection (1): agricultural irrigation; snowmaking; dewatering incidental to mining and quarrying; and dewatering incidental to construction. Persons engaged in such withdrawals in excess of 100,000 gallons per day during any 30-day period shall record the pumping rates and the dates and elapsed hours of operation of any well or pump used to withdraw water, and report such information as required in subsection (1).

(3) The following are the designated state agencies for the purposes of this regulation: Delaware Department of Natural Resources and Environmental Control; New Jersey Department of Environmental Protection; New York State Department of Environmental Conservation; and Pennsylvania Department of Environmental Resources.

(4) Pursuant to Section 11.5 of the Compact, the designated state agencies shall administer and enforce programs for metering, recording, and reporting of water withdrawals, in accordance with this regulation and any applicable state regulations.

PART 430—[AMENDED]

1. The authority citation for 18 CFR Part 430 continues to read as follows:

Authority: Pub. L. 87–328 (75 Stat. 688).

2. Existing §§ 430.19, 430.21, 430.23, 430.24, 430.25, 430.27, 430.29, and 430.31 are redesignated as §§ 430.21, 430.23, 430.25, 430.27, 430.29, 430.31, 430.33 and 430.35 respectively and the new § 430.19 is added to read as follows:

§430.19 Ground water withdrawal metering, recording, and reporting.

(a) Each person, firm, corporation, or other entity whose cumulative daily average withdrawal of ground water from a well or group of wells operated as a system exceeds 10,000 gallons per day during any 30-day period shall meter or measure and record their withdrawals and report such withdrawals to the Pennsylvania Department of Environmental Resources. Withdrawals shall be measured by means of an automatic continuous recording device, flow meter, or other method, and shall be measured to within five percent of actual flow. Meters or other methods of measurement shall be subject to approval and inspection by the Pennsylvania Department of Environmental Resources as to type, method, installation, maintenance, calibration, reading, and accuracy. Withdrawals shall at a minimum be recorded on a daily basis for public water supply use and on a biweekly basis for all other water uses, and reported as monthly totals annually. More frequent recording or reporting may be required by the Pennsylvania Department of Environmental Resources or the Commission.

(b) The following water uses and operations are exempt from the metering or measurement requirements of subsection (a): Agricultural irrigation; snowmaking; dewatering incidental to mining and quarrying; dewatering incidental to construction; and space heating or cooling uses that are exempt from permit requirements in § 430.13. Except for space heating and cooling uses described herein, persons engaged in such exempt withdrawals in excess of 10,000 gallons per day during any 30-day period shall record the pumping rates and the dates and elapsed hours of operation of any well or pump used to withdraw ground water, and report such information as required in subsection (a). Space heating and cooling uses that are exempt from permit requirements in § 430.13 shall also be exempt from the requirement for recording and reporting.

(c) Pursuant to section 11.5 of the Compact, the Pennsylvania Department of Environmental Resources shall administer and enforce a program for metering, recording, and reporting ground-water withdrawals in accordance with this regulation.

(Delaware River Basin Compact, 75 Stat. 688)

Susan M. Weisman,

Secretary.

July 3, 1986.

[FR Doc. 86–15514 Filed 7–9–86; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Hyaluronate Sodium Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of the new animal drug application (NADA) filed by Solvay Veterinary, Inc., providing for safe and effective use of hyaluronate sodium injection in treating horses for joint dysfunction due to noninfectious synovitis associated with equine osteoarthritis.

EFFECTIVE DATE: July 10, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Solvay Veterinary, Inc., P.O. Box 7348, Princeton, NJ 08540, is the sponsor of

NADA 139-913 which provides for intraarticular injection of a solution containing 5 milligrams per milliliter of hyaluronate sodium (Equron™) for treating horses for joint dysfunction due to noninfectious synovitis associated with equine osteoarthritis. The application is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

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

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25) that was published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985).

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 is revised to read as follows:

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

2. In § 522.1145 by redesignating existing paragraphs (a), (b), (c) (1), (2), and (3) as (a) (1), (2), (3) (i), (ii), and (iii), respectively, and by adding new paragraph (b), to read as follows:

§ 522.1145 Hyaluronate sodium injection.

* * * * *

(b)(1) *Specifications.* Each milliliter of sterile aqueous solution contains 5 milligrams of hyaluronate sodium.

(2) *Sponsor.* See 053501 in § 510.600(c) of this chapter.

(3) *Conditions of use*—(i) *Amount.* Small and medium-size joints (carpal, fetlock)—10 milligrams; larger joint (hock)—20 milligrams.

(ii) *Indications for use.* Treatment of joint dysfunction in horses due to noninfectious synovitis associated with equine osteoarthritis.

(iii) *Limitations.* For intraarticular injection in horses only. Treatment may be repeated at weekly intervals for a total of four treatments. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: July 3, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-15497 Filed 7-9-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8093]

Income Taxes; Below-Market Loans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains amendments to temporary regulations which were published August 20, 1985 in the **Federal Register**, relating to the Federal tax treatment of both the lender and the borrower in certain below market interest rate loan transactions. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations amend several of the exemptions set forth in the temporary regulations.

DATES: The regulations apply to below-market term loans made after June 6, 1984, and below-market demand loans outstanding after June 6, 1984, and are effective June 6, 1984.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T), 202-566-3828, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document amends temporary Income Tax Regulations (26 CFR Part 1) under section 7872 of the Internal Revenue Code of 1954.

In General

Section 7872 treats certain below-market loans as economically equivalent to loans bearing interest at the applicable Federal rate coupled with a payment by the lender to the borrower sufficient to fund the payment of interest by the borrower. The temporary regulations published August 20, 1985 in the **Federal Register** provide for the exemption of certain below-market loans from the rules of section 7872 on the grounds that the application of section 7872 would not have a significant effect on any Federal tax liability of the lender or the borrower. If, however, one of the exempted loans is structured as such for tax avoidance purposes, the Service may recharacterize the transaction according to its economic substance and apply section 7872 in accordance with its terms. The exemptions include:

(1) Loans made prior to July 1, 1986, to the extent excepted from the application of section 482 for the 6-month (or longer) period referred to in § 1.482-2(a)(3);

(2) For periods prior to July 1, 1986, all money securities, and property received by a futures commission merchant or by a clearing organization (i) to margin, guarantee or secure contracts for future delivery on or subject to the rules of a qualified board or exchange (as defined in section 1256(g)(7)) or (ii) to purchase, margin guarantee or secure options contracts traded on or subject to the rules of a qualified board or exchange, and all money accruing to account holders as the result of such futures and options contracts; and

(3) Loans to a charitable organization (described in section 170(c)), but only if the aggregate outstanding amount of loans by the lender to all such organizations does not exceed $10,000 at any time during the taxable year.

Exemption for Loans Excepted Under Section 482

Commentators suggested that the exemption for loans made prior to July 1, 1986, to the extent excepted from the application of section 482 for the 6-month (or longer) period referred to in § 1.482-2(a)(3) be made permanent. The Service believes that the treatment of transactions which would fall within the application of both section 482 and section 7872 should be consistent. Therefore, to the extent that a loan subject to section 482 will not have

interest imputed under § 1.482–2(a)(3), it is exempt from section 7872.

Exemption for Money, Securities and Property Received by Futures Commissions Merchants, Etc.

Commentators suggested that the exemption for money, securities and property deposited with a futures commission merchant or with a clearing organization be made permanent. The Service has concluded that the interest arrangements of such deposits do not have a significant effect on the Federal tax liability of the borrower or lender. Accordingly, this document removes the limitation that only money, securities and property received prior to July 1, 1986 are exempt from the application of section 7872. Additionally, the regulations extend the exemption to margin payments received by a stockbroker and to clearing fund deposits.

The continued exemption from the below-market loan rules for these types of deposits reflects current practice with respect to such deposits, under which the level of commissions charged to customers is not based on whether deposits are made in the form of money or interest-bearing securities. If current practice evolves in the direction of large interest-free cash deposits and lower commissions to attempt to obtain an indirect deduction for commission expenses, the Service will reconsider whether this exemption is warranted.

Exemptions for Loans to Charitable Organizations

Commentators suggested that the exemption for loans to a charitable organization be modified to apply the de minimis limitation to loans to each such organization, rather than to all such organizations. The Service has concluded that such a modification is appropriate and that the interest arrangements of loans subject to such limits will not have a significant effect on the Federal tax liability of the borrower or lender. The Service has additionally concluded that if loans to a charitable organization are not greater than $250,000 the interest arrangements of such loans will not have a significant effect on the Federal tax liability of the borrower or lender.

Inapplicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6.)

Drafting Information

The principal author of these regulations is Sharon L. Hall of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 1

Income taxes, Gift taxes, Below-market loans.

PART 1—[AMENDED]

Amendments to the regulations

The amendments to 26 CFR Part 1 are as follows:

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 1.7872–5T also issued under 26 U.S.C. 7872.

Par. 2. Section 1.7872–5T (b) is amended by revising paragraphs (b) (9), (12) and (13) to read as follows.

§ 1.7872–5T Exempted Loans (Temporary)

* * * * *

(b) * * *

(9) Loans to a charitable organization (described in section 170(c)), but only if at no time during the taxable year will the aggregate outstanding amount of loans by the lender to that organization exceed $250,000. Charitable organizations which are effectively controlled, within the meaning of section 1.482–1(a)(1), by the same person or persons shall be considered one charitable organization for purposes of this limitation.

* * * * *

(12) Any loan expected from the application of section 482 for the period referred to in § 1.482–2(a)(3).

(13) All money, securities, and property—

(i) Received by a futures commission merchant or registered broker/dealer or by a clearing organization (A) to margin, guarantee or secure contracts for future delivery on or subject to the rules of a qualified board or exchange (as defined in section 1256(g)(7)), or (B) to purchase, margin, guarantee or secure options contracts traded on or subject to the rules of a qualified board or exchange, so long as the amounts so received to purchase, margin, guarantee or secure such contracts for future delivery or such options contracts are reasonably necessary for such purposes and so long as any commissions received by the futures commission merchant, registered broker-dealer, or clearing organization are not reduced for those making deposits of money, and all money accruing to account holders as the result of such futures and options contacts or

(ii) Received by a clearing organization from a member thereof as a required deposit to a clearing fund, guaranty fund, or similar fund maintained by the clearing organization to protect it against defaults by members.

* * * * *

Note.—There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under section (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: June 30, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86–15618 Filed 7–9–86; 8:45 am]

BILLING CODE 4380–01–M

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26 CFR Parts 1 and 602

[T.D. 8094]

Income Taxes; Special Rules Relating to Nuclear Decommissioning Costs

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the Federal income tax treatment of nuclear decommissioning costs. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register.** Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations affect all taxpayers that include nuclear decommissioning costs in cost of service for ratemaking purposes.

DATES: The regulations are effective on July 18, 1984, and apply with respect to

taxable years ending on or after such date.

FOR FURTHER INFORMATION CONTACT: C. Scott McLeod of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T, 202–566–3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) and the Table of OMB Control Numbers (26 CFR Part 602) to provide rules under sections 88 and 468A of the Internal Revenue Code of 1954. Section 88 was added to the Code by section 91(f) of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 607) and section 468A was added to the Code by section 91(c) of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 604).

Explanation of Provisions

Section 88 requires taxpayers that are engaged in the furnishing or sale of electric energy generated by a nuclear power plant to include in gross income the amount of nuclear decommissioning costs that are included in cost of service for ratemaking purposes for any taxable year. The regulations clarify that the amount of nuclear decommissioning costs directly or indirectly charged to the customers of a taxpayer, whether paid to the taxpayer, a nuclear decommissioning fund or other entity, must be included in the gross income of such taxpayer in the same manner as amounts charged for electric energy, even though the taxpayer does not control the investment or current expenditure of the amount. In addition, the regulations provide general guidance on the effective date of section 88.

Section 468A provides an elective method for taking into account nuclear decommissioning costs for Federal income tax purposes. In general, an eligible taxpayer that elects the application of section 468A is allowed a deduction for the amount of cash payments made to a nuclear decommissioning fund during any taxable year. Taxpayers using an accrual method of accounting that do not elect the application of section 468A are not allowed a deduction for nuclear decommissioning costs prior to the taxable year in which economic performance occurs with respect to such costs (see section 461(h)).

Section 468A(b) limits the amount of deductible cash payments that can be made to a nuclear decommissioning fund during any taxable year to the lesser of (1) the amount of nuclear decommissioning costs allocable to the fund that is included in the taxpayer's cost of service for ratemaking purposes for such taxable year, or (2) the ruling amount applicable to the fund for such taxable year. Cash payments made to a nuclear decommissioning fund during any taxable year that exceed the limitation are not deductible by the taxpayer and may cause a disqualification of the fund.

Section 468A(d) provides that a taxpayer must request and receive a schedule of ruling amounts from the Internal Revenue Service in order for amounts paid to a nuclear decommissioning fund to be allowed as a deduction. The schedule of ruling amounts is a schedule of annual amounts that the Internal Revenue Service determines to be necessary to fund, at a rate no more rapid than level funding, the portion of the total estimated cost of decommissioning that is attributable to the remaining estimated useful life of the nuclear power plant as of the date of the nuclear decommissioning fund is established. The schedule of ruling amounts is required to be reviewed by the Internal Revenue Service at least once during the estimated useful life of the nuclear power plant or more frequently at the request of the taxpayer.

Section 468A(e)(1) provides that a nuclear decommissioning fund is to be established by the taxpayer for each nuclear power plant to which the section 468A election applies. The assets of a nuclear decommissioning fund are to be used exclusively (1) to satisfy, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates, (2) to pay administrative costs and other incidental expenses of the nuclear decommissioning fund, and (3) to the extent that the assets of the nuclear decommissioning fund are not required for the aforementioned purposes, to invest in public debt securities of the United States, obligations of a State or local government, or time or demand deposits. In addition, section 468A(e)(5) and (6) contains special rules to discourage acts of self-dealing between the nuclear decommissioning fund and certain disqualified persons. If a nuclear decommissioning fund fails to comply with the qualification requirements or engages in an act of self-dealing, it may be disqualified by the Internal Revenue Service and treated as having distributed its assets on the date of disqualification.

Section 468A(e)(2) provides that the gross income of a nuclear decommissioning fund is subject to tax at the maximum rate in effect under section 11(b). In determining the gross income of a nuclear decommissioning fund for purposes of this tax, the amount of any payment to the fund that is deductible by the taxpayer under section 468A is excluded from the gross income of the fund and the amount of administrative costs and other incidental expenses of the fund paid by the fund to any person other than the taxpayer is deductible by the fund if such amount would be deductible in determining the taxable income of a corporation. Finally, for purposes of subtitle F of the Code (relating to procedure and administration), a nuclear decommissioning fund is treated as a corporation and any tax imposed on the income of the nuclear decommissioning fund is treated as a tax imposed by section 11.

In general, the amount of any actual distribution from a nuclear decommissioning fund must be included in the gross income of the taxpayer for the taxable year in which the distribution occurs. Thus, the amount of any distribution from a nuclear decommissioning fund used to satisfy, in whole or in part, any liability for the decommissioning of a nuclear power plant must be included in gross income of the taxpayer. The amount of an actual distribution from a nuclear decommissioning fund to pay administrative costs or other incidental expenses of the nuclear decommissioning fund is not included in the gross income of the taxpayer, however, unless such amount is paid to the taxpayer. In addition, the amount of any deemed distribution must be included in the gross income of the taxpayer for the taxable year in which the deemed distribution occurs. A deemed distribution from a nuclear decommissioning fund generally occurs upon the disqualification of the fund, a disposition of an interest in the nuclear power plant to which the fund relates or the substantial completion of the decommissioning of the nuclear power plant to which the fund relates.

The regulations under section 468A specify those taxpayers that are eligible for, and the manner of making, the election under section 468A. In addition, the regulations provide specific guidance on the manner of requesting a schedule of ruling amounts and the factors to be taken into account in determining a schedule of ruling amounts. Finally, the regulations provide guidance on the nuclear decommissioning fund qualification requirements, the consequences if a

nuclear decommissioning fund is disqualified, the treatment of the selling and purchasing taxpayer in the case of a disposition of an interest in a nuclear power plant, the effective date of section 468A and the transitional rules applicable to taxpayers that elect section 468A for taxable years beginning before January 1, 1987.

Executive Order 12291, Regulatory Flexibility Act and Paperwork Reduction Act

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act.

Drafting Information

The principal author of these regulations is C. Scott McLeod of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.61–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.441–1 through 1.483–2

Income taxes, Accounting, Deferred compensation plans.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

The amendments to 26 CFR Part 1 and Part 602 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.468A–5T also issued under 26 U.S.C. 468A(e)(5).

Par. 2. The following new section is added immediately after § 1.85–1 to read as follows:

§ 1.88–1T Nuclear decommissioning costs (temporary).

(a) *In general.* Section 88 provides that the amount of nuclear decommissioning costs directly or indirectly charged to the customers of a taxpayer that is engaged in the furnishing or sale of electric energy generated by a nuclear power plant must be included in the gross income of such taxpayer in the same manner as amounts charged for electric energy. For this purpose, amounts payable to any other person (such as a trust or State government) shall be treated as if payable to the taxpayer. Thus, the amount of nuclear decommissioning costs directly or indirectly charged to the customers of a taxpayer, whether paid to the taxpayer, a nuclear decommissioning fund or other entity, is required to be included in gross income under section 88 and this section, even though the taxpayer does not control the investment or current expenditure of the amount and the amount will not be paid to the taxpayer at the time decommissioning costs are incurred.

(b) *Example.* The following example illustrates the application of the principles of paragraph (a) of this section:

Example. X corporation, an accrual method taxpayer engaged in the sale of electric energy generated by a nuclear power plant owned by X, is authorized by the public utility commission of State A to collect nuclear decommissioning costs from ratepayers residing in State A. With respect to the sale of electric energy, X includes in income amounts that have been billed to customers as well as estimated unbilled amounts that relate to energy provided by X after the previous billing but before the end of the taxable year ("accrued unbilled amounts"). The decommissioning costs are included in the monthly bills provided by X to its ratepayers and the entire amount billed is remitted directly to X. Under paragraph (a) of this section, the decommissioning costs must be included in the gross income of X in the same manner as amounts charged for electric energy (*i.e.*, by including in income decommissioning costs that relate to amounts billed as well as decommissioning costs that relate to accrued unbilled amounts). The same rule would apply if the decommissioning costs charged to ratepayers were separately billed and the amounts billed were remitted to State A to be held in trust for the purpose of decommissioning the nuclear power plant owned by X. In that case, X must include in gross income decommissioning costs that relate to amounts billed as well as decommissioning costs that relate to accrued unbilled amounts.

(c) *Cross reference.* For special rules relating to the deduction for amounts paid to a nuclear decommissioning fund, see § 1.468A–1T through § 1.468A–8T.

(d) *Effective date.* (1) Section 88 and this section apply to nuclear decommissioning costs directly or indirectly charged to the customers of a taxpayer on or after July 18, 1984, and with respect to taxable years ending on or after such date.

(2) If the amount of nuclear decommissioning costs directly or indirectly charged to the customers of a taxpayer before July 18, 1984, is includible in gross income in a different manner than amounts charged for electric energy, such amount must be included in gross income for the taxable year in which includible in gross income under the method of accounting of the taxpayer that was in effect when such amount was charged to customers.

Par. 3. The following new §§ 1.468A–1T through 1.468A–8T are added in the appropriate places:

§ 1.468A–1T Nuclear decommissioning costs; general rules (temporary).

(a) *Introduction.* Section 468A provides an elective method for taking into account nuclear decommissioning costs for Federal income tax purposes. In general, an eligible taxpayer that elects the application of section 468A pursuant to the rules contained in § 1.468A–7T is allowed a deduction (as determined under § 1.468A–2T) for the taxable year in which the taxpayer makes a cash payment to a nuclear decommissioning fund. Taxpayers using an accrual method of accounting that do not elect the application of section 468A are not allowed a deduction for nuclear decommissioning costs prior to the taxable year in which economic performance occurs with respect to such costs (see section 461(h)).

(b) *Definitions.* The following terms are defined for purposes of §§ 1.468A–1T through 1.468A–8T:

(1) The term "eligible taxpayer" means any taxpayer that possesses a direct ownership interest in a nuclear power plant (including a nuclear power plant that is under construction). Such term includes a taxpayer that owns an interest in a nuclear power plant as a tenant in common or joint tenant, but does not include a taxpayer that owns stock in a corporation which owns a nuclear power plant or a taxpayer that is a partner in a partnership which owns a nuclear power plant. Thus, in the case of a partnership that owns a nuclear power plant, the election under section 468A must be made by the partnership and not by the partners.

In the case of an unincorporated organization described in § 1.761–2(a)(3)

that elects under section 761(a) to be excluded from the application of subchapter K, each taxpayer that is a co-owner of the nuclear power plant is eligible to make a separate election under section 468A.

(2) The term "nuclear decommissioning fund" means a fund that satisfies the requirements of § 1.468A–5T.

(3) The term "nuclear power plant" means any nuclear power reactor that is used predominantly in the trade or business of the furnishing or sale of electric energy, if the rates for such furnishing or sale, as the case may be, have been established or approved by a public utility commission. Each unit (*i.e.*, nuclear reactor) located on a multi-unit site is a separate nuclear power plant.

(4) The term "nuclear decommissioning costs" or "decommissioning costs" means all otherwise deductible expenses to be incurred in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a nuclear power plant that has permanently ceased the production of electric energy. Such term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all othewise deductible expenses to be incurred after the actual decommissioning occurs, such as physical security and radiation monitoring expenses. Such term does not include otherwise deductible expenses to be incurred in connection with the disposal of spent nuclear fuel under the Nuclear Waste Policy Act of 1982 (Pub. L. 97–425). An expense is otherwise deductible for purposes of this paragraph (b)(4) if it would be deductible under chapter 1 of the Internal Revenue Code without regard to section 280B.

(5) The term "public utility commission" means any State or political subdivision thereof, any agency, instrumentality or judicial body of the United States, or any judicial body, commission or other similar body of the District of Columbia or of any State or any political subdivision thereof that establishes or approves rates for the furnishing or sale of electric energy.

§ 1.468A–2T Treatment of electing taxpayer (temporary).

(a) *In general.* An eligible taxpayer that elects the application of section 468A pursuant to the rules contained in § 1.468A–7T (an "electing taxpayer") is allowed a deduction for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment as provided in paragraph (c) of this section) to a nuclear decommissioning fund. The amount of the deduction for any taxable year equals the total amount of cash payments made (or deemed made) by the electing taxpayer to a nuclear decommissioning fund (or nuclear decommissioning funds) during such taxable year. A payment may not be made (or deemed made) to a nuclear decommissioning fund before the first taxable year in which all of the following conditions are satisfied:

(1) The construction of the nuclear power plant has commenced.

(2) Nuclear decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates are included in the taxpayer's cost of service for ratemaking purposes (see paragraph (b) of this section).

(3) A ruling amount is applicable to the nuclear decommissioning fund (see § 1.468A–3T).

(b) *Limitation on payments to a nuclear decommissioning fund*—(1) *In general.* For purposes of paragraph (a) of this section, the maximum amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year shall not exceed the lesser of—

(i) The cost of service amount applicable to the nuclear decommissioning fund for such taxable year (as defined in paragraph (b)(2) of this section); or

(ii) The ruling amount applicable to the nuclear decommissioning fund for such taxable year (as determined under § 1.468A–3T).

If the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year exceeds the limitation of this paragraph (b)(1), the excess is not deductible by the electing taxpayer. In addition, see paragraph (c) of § 1.468A–5T for rules which provide that the Internal Revenue Service may disqualify a nuclear decommissioning fund if the amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year exceeds the limitation of this paragraph (b)(1).

(2) *Cost of service amount.* (i) For purposes of section 468A and the regulations thereunder, the "cost of service amount applicable to a nuclear decommissioning fund for a taxable year" is the amount of decommissioning costs included in the electing taxpayer's cost of service for ratemaking purposes for such taxable year that is properly allocable to the nuclear power plant to which the nuclear decommissioning fund relates. The allocation of the amount of decommissioning costs included in cost of service to each of the nuclear power plants of the electing taxpayer must be performed on a reasonable and consistent basis taking into account the assumptions and determinations, if any, used by the public utility commission(s) in establishing or approving the amount of decommissioning costs included in cost of service.

(ii) Decommissioning costs shall generally not be considered included in cost of service for purposes of this section unless—

(A) The order or opinion of the applicable public utility commission identifies the amount of decommissioning costs that is included in cost of service for ratemaking purposes; or

(B) The written records of the ratemaking proceeding clearly and unambiguously indicate the amount of decommissioning costs that is included in cost of service for ratemaking purposes.

(c) *Deemed payment rules.* (1) The amount of any cash payment made by an electing taxpayer to a nuclear decommissioning fund on or before the 15th day of the third calendar month after the close of any taxable year (the "deemed payment deadline date") shall be deemed made during such taxable year if the electing taxpayer irrevocably designates the amount as relating to such taxable year on its timely filed Federal income tax return for such taxable year (see paragraph (b)(4)(iv) of § 1.468A–7T for rules relating to such designation).

(2) The amount of any cash payment made by a customer of an electing taxpayer to a nuclear decommissioning fund of such electing taxpayer shall be deemed made by the electing taxpayer if the amount is included in the gross income of the electing taxpayer in the manner prescribed by section 88 and § 1.88–1T.

(d) *Treatment of distributions*—(1) *In general.* Except as otherwise provided in paragraph (d)(2) of this section, the amount of any actual or deemed distribution from a nuclear decommissioning fund shall be included in the gross income of the electing taxpayer for the taxable year in which the distribution occurs. A distribution from a nuclear decommissioning fund shall include an expenditure from the fund or the use of the fund's assets—

(i) To satisfy, in whole or in part, the liability of the electing taxpayer for

decommissioning costs of the nuclear power plant to which the fund relates; or

(ii) To pay administrative costs and other incidental expenses of the fund.

See paragraphs (c) and (d) of § 1.468A–5T for rules relating to the deemed distribution of the assets of a nuclear decommissioning fund in the case of a disqualification or termination of the fund. In addition, see paragraph (a) of § 1.468A–6T for rules relating to the deemed distribution of the assets of a nuclear decommissioning fund in the case of a disposition of an interest in a nuclear power plant.

(2) *Exceptions to inclusion in gross income*—(i) *Payment of administrative costs and incidental expenses.* The amount of any payment by a nuclear decommissioning fund for administrative costs or other incidental expenses of such fund (as defined in paragraph (a)(3)(ii)(A) of § 1.468A–5T) shall not be included in the gross income of the electing taxpayer unless such amount is paid to the electing taxpayer (in which case the amount of the payment is included in the gross income of the electing taxpayer under section 61).

(ii) *Withdrawals of excess contributions.* The amount of a withdrawal of an excess contribution (as defined in paragraph (c)(2)(ii) of § 1.468A–5T) by an electing taxpayer pursuant to the rules of paragraph (c)(2) of § 1.468A–5T shall not be included in the gross income of the electing taxpayer. See paragraph (b)(1) of this section, which provides that the payment of such amount to the nuclear decommissioning fund is not deductible by the electing taxpayer.

(iii) *Actual distributions of amounts included in gross income as deemed distributions.* If the amount of a deemed distribution is included in the gross income of the electing taxpayer for the taxable year in which the deemed distribution occurs, no further amount is required to be included in gross income when the amount of the deemed distribution is actually distributed by the nuclear decommissioning fund. The amount of a deemed distribution is actually distributed by a nuclear decommissioning fund as the first actual distributions are made by the nuclear decommissioning fund on or after the date of the deemed distribution.

(iv) *Distributions upon substantial completion of decommissioning.* The amount of a deemed distribution of the assets of a nuclear decommissioning fund upon termination of the fund (see paragraph (d) of § 1.468A–5T) shall not be included in the gross income of the electing taxpayer for the taxable year in which the termination occurs to the extent that the amount is refunded to ratepayers within one calendar year after the termination of the fund. Thus, an amended return may be required if an amount is refunded within the one-year period but after the filing of the original return for the taxable year in which the termination occurs.

(e) *Deduction when economic performance occurs.* An electing taxpayer using an accrual method of accounting is allowed a deduction for nuclear decommissioning costs no earlier than the taxable year in which economic performance occurs with respect to such costs (see section 461(h)(2)). The amount of nuclear decommissioning costs that is deductible under this paragraph (e) is determined without regard to section 280B (see paragraph (b)(4) of § 1.468A–1T). A deduction is allowed under this paragraph (e) whether or not a deduction was allowed with respect to such costs under section 468A(a) and paragraph (a) of this section for an earlier taxable year (see paragraph (a)(2) of § 1.468A–8T, however, for the effective date applicable to this paragraph (e)).

(f) *Effect of interim rate orders and retroactive adjustments to such orders*—(1) *In general.* (i) The amount of decommissioning costs included in cost of service for any taxable year that ends before the date of a retroactive adjustment to an interim rate order or interim determination of a public utility commission shall include amounts authorized pursuant to such interim rate order or interim determination unless a taxpayer elects the application of paragraph (f)(2) of this section for such taxable year.

(ii) If a retroactive adjustment to an interim rate order or interim determination reduces the amount of decommissioning costs included in cost of service for one or more taxable years ending before the date of the adjustment, the amount of such reduction shall be subtracted from the amount of decommissioning costs included in cost of service (as determined under paragraph (b)(2) of this section) for one or more taxable years ending on or after the date of the adjustment. For this purpose, the amount of such reduction shall be taken into account in the following manner:

(A) If the retroactive order reduces the amount of decommissioning costs included in cost of service for one taxable year ending before the date of the adjustment, the total amount of the reduction shall be taken into account for the taxable year that includes the date of the adjustment.

(B) If the retroactive order reduces the amount of decommissioning costs included in cost of service for two taxable years ending before the date of the adjustment, one-half of the total amount of the reduction shall be taken into account for each of the first two taxable years ending on or after the date of the adjustment.

(C) If the retroactive order reduces the amount of decommissioning costs included in cost of service for three or more taxable years ending before the date of the adjustment, one-third of the total amount of the reduction shall be taken into account for each of the first three taxable years ending on or after the date of the adjustment.

(2) *Special rule permitting withdrawal of excess contribution that results from retroactive adjustment to interim rate order.* (i) If a retroactive adjustment that reduces the amount of decommissioning costs included in cost of service for a taxable year occurs on or before the date prescribed by law (including extensions) for filing the return of the nuclear decommissioning fund for such taxable year, a taxpayer may elect the application of this paragraph (f)(2) for such taxable year by—

(A) Including in the amount of decommissioning costs included in cost of service for such taxable year only the amount of decommissioning costs authorized for such taxable year under the retroactive adjustment; and

(B) Withdrawing any excess contribution that results from such treatment in accordance with the rules of paragraph (c)(2) of § 1.468A–5T.

(ii) If a taxpayer elects the application of this paragraph (f)(2) for any taxable year, the retroactive adjustment shall not be treated for purposes of paragraph (f)(1)(ii) of this section as a reduction in the amount of decommissioning costs included in cost of service for such taxable year.

(3) *Revised schedule of ruling amounts.* If the rules provided in this paragraph (f) result in a cost of service amount applicable to a nuclear decommissioning fund for any taxable year that is less than the cost of service amount applicable to the nuclear decommissioning fund for the immediately preceding taxable year, the taxpayer is generally required to request a revised schedule of ruling amounts for the period beginning with the taxable year in which the taxpayer's request must be filed (see paragraph (i)(1)(iii)(C) of § 1.468A–3T. If a taxpayer has made an election under paragraph (f)(2) of this section and is required to request a revised schedule of ruling amounts by reason of the cost of service limitation

described in paragraph (f)(2)(i)(A) of this section, the taxpayer must file a request for a revised schedule on or before the 90th day following the date that the excess contribution is withdrawn from the nuclear decommissioning fund.

(4) *Example.* The following example illustrates the application of the principles of this paragraph (f):

Example. X corporation is a calendar year, accrual method taxpayer engaged in the sale of electric energy generated by a nuclear power plant owned by X. During 1989, X is authorized pursuant to an interim rate order issued by the public utility commission of State A to collect nuclear decommissioning costs of $500,000 per year beginning on January 1, 1990. On July 1, 1992, the public utility commission of State A issues a final rate order that authorizes X to collect decommissioning costs of $400,000 per year as of January 1, 1990. The excess decommissioning costs of $250,000 collected between January 1, 1990, and July 1, 1992, must be refunded to the ratepayers of State A by X.

If X elects the application of paragraph (f)(2) of this section for the 1991 taxable year, the amount of decommissioning costs included in cost of service for such taxable year is $400,000. If X made a contribution of $500,000 to a nuclear decommissioning fund for the 1991 taxable year, X must withdraw $100,000 from the nuclear decommissioning fund on or before the date prescribed by law (including extensions) for filing the return of the nuclear decommissioning fund for the 1991 taxable year (see paragraph (c)(2) of § 1.468A–5T.

In addition, under paragraph (f)(1)(i) of this section, the amount of decommissioning costs included in cost of service for the 1990 taxable year is $500,000, and, under paragraph (f)(1)(ii) of this section, the amount of decommissioning costs included in cost of service for the 1992 taxable year is $300,000. Because the cost of service amount for the 1991 taxable year ($400,000) is less than the cost of service amount for the 1990 taxable year ($500,000) (and because the Internal Revenue Service was not notified of the decrease in the taxpayer's most recent request for a schedule of ruling amounts), paragraph (i)(1)(iii)(C) of § 1.468A–3T applies and X must file a request for a revised schedule of ruling amounts for the period beginning with the 1992 taxable year on or before the 90th day following the date that the excess contribution for 1991 is withdrawn from the nuclear decommissioning fund.

Alternatively, if X does not elect the application of paragraph (f)(2) of this section for the 1991 taxable year, under paragraph (f)(1)(i) of this section, the amount of decommissioning costs included in costs of service for the 1990 and 1991 taxable years is $500,000, and, under paragraph (f)(1)(ii) of this section, the amount of decommissioning costs included in cost of service for the 1992 and 1993 taxable years is $300,000. Because the cost of service amount for the 1992 taxable year ($300,000) is less than the cost of service amount for the 1991 taxable year ($500,000) (and because the Internal Revenue Service was not notified of the decrease in the taxpayer's most recent request for a schedule of ruling amounts), paragraph (i)(1)(iii)(C) of § 1.468A–3T applies and X must file a request for a revised schedule of ruling amounts for the period beginning with the 1993 taxable year on or before June 29, 1993.

§ 1.468A–3T Ruling amount (temporary).

(a) *In general.* (1) An electing taxpayer is allowed a deduction under section 468A(a) for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to a nuclear decommissioning fund only if the taxpayer has received a schedule of ruling amounts for the nuclear decommissioning fund that includes a ruling amount for such taxable year. A schedule of ruling amounts for a nuclear decommissioning fund ("schedule of ruling amounts") is a ruling (within the meaning of paragraph (a)(2) of § 601.201) specifying the annual payments ("ruling amounts") that, over the taxable years remaining in the "funding period" as of the date the schedule first applies, will result in a projected balance of the nuclear decommissioning fund as of the last day of the funding period equal to (and in no event greater than) the "amount of decommissioning costs allocable to the fund." The projected balance of a nuclear decommissioning fund as of the last day of the funding period shall be calculated by taking into account the fair market value of the assets of the fund as of the first day of the first taxable year to which the schedule of ruling amounts applies and the estimated rate of return to be earned by the assets of the fund after payment of the estimated administrative costs and incidental expenses to be incurred by the fund (as defined in paragraph (a)(3)(ii)(A) of § 1.468A–5T), including all Federal, State and local income taxes to be incurred by the fund (the "after-tax rate of return"). See paragraph (c) of this section for a definition of funding period and paragraph (d) of this section for guidance with respect to the amount of decommissioning costs allocable to a fund.

(2) To the extent consistent with the principles and provisions of this section, each schedule of ruling amounts shall be based on the reasonable assumptions and determinations used by the applicable public utility commission(s) in establishing or approving the amount of decommissioning costs included in cost of services for ratemaking purposes. Thus, for example, each schedule of ruling amounts shall be based on the public utility commission's reasonable assumptions concerning the after-tax rate of return to be earned by the nuclear decommissioning fund and the reasonable assumptions concerning the total estimated cost of decommissioning the nuclear power plant.

(3) The Internal Revenue Service shall provide a schedule of ruling amounts that is identical to the schedule of ruling amount proposed by the taxpayer in connection with the taxpayer's request for a schedule of ruling amounts (see paragraph (h)(2)(viii) of this section), but no schedule of ruling amounts shall be provided unless the taxpayer's proposed schedule of ruling amounts is consistent with the principles and provisions of this section. If a proposed schedule of ruling amounts is not consistent with the principles and provisions of this section, the taxpayer may propose an amended schedule of ruling amounts that is consistent with such principles and provisions.

(4) The Internal Revenue Service may, in its discretion, provide a schedule of ruling amounts that is determined on a basis other than the rules of paragraph (a) through (g) of this section if—

(i) In connection with its request for a schedule of ruling amounts, the taxpayer explains the need for special treatment and sets forth an alternative basis for determining the schedule of ruling amounts; and

(ii) The Internal Revenue Service determines that special treatment is consistent with the purpose of section 468A.

(b) *Level funding limitation*—(1) The ruling amount specified in a schedule of ruling amounts for any taxable year in the level funding limitation period shall not be less than the ruling amount specified in such schedule for any earlier taxable year.

(2) For purposes of this section, the level funding limitation period for a nuclear decommissioning fund is the period that—

(i) Begins on the first day of the first taxable year for which a deductible payment is made (or deemed made) to such nuclear decommissioning fund (see paragraph (a)(1) of § 1.468A–2T for rules relating to the first taxable year for which a payment may be made (or deemed made) to a nuclear decommissioning fund); and

(ii) Ends on the last day of the taxable year that includes the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes (see paragraph (e)(2) of this section).

(3) The ruling amount specified in a schedule of ruling amounts for a taxable year after the end of the level funding limitation period may be less than the

ruling amount specified in such schedule for an earlier taxable year.

(c) *Funding period—(1) General rule.* For purposes of this section, the funding period for a nuclear decommissioning fund is the period that—

(i) Begins on the first day of the first taxable year for which a deductible payment is made (or deemed made) to such a nuclear decommissioning fund (see paragraph (a)(1) of § 1.468A–2T for rules relating to the first taxable year for which a payment may be made (or deemed made) to a nuclear decommissioning fund); and

(ii) Ends on the later of—

(A) The last day of the taxable year that includes the estimated date on which decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's cost of service for ratemaking purposes (see paragraph (e)(1) of this section); or

(B) The last day of the taxable year that includes the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes (see paragraph (e)(2) of this section).

(2) *Examples.* The following examples illustrate the application of the principles of paragraphs (a), (b) and (c) of this section:

Example (1). (i) X corporation is a calendar year, accrual method taxpayer engaged in the sale of electric energy generated by power plants owned by X. On March 15, 1995, X commences the construction of a nuclear power plant in State A. On May 15, 1995, the public utility commission of State A issues a final rate order for the four-year period beginning on January 1, 1995, that authorizes X to collect decommissioning costs from ratepayers residing in State A. For the 1995 taxable year, X is authorized to collect decommissioning costs of $500,000, and, for each taxable year during the remainder of the period to which the rate order applies, X is authorized to collect decommissioning costs in an amount equal to 105 percent of the amount authorized to be collected for the preceding taxable year.

In determining the amount of decommissioning costs to be collected from ratepayers residing in State A, the public utility commission assumes that (A) decommissioning costs will be included in cost of service for each taxable year in the period that begins with 1995 and ends with 2025 and (B) decommissioning costs collected pursuant to subsequent rate orders will increase in the same manner as amounts collected pursuant to the rate order issued on May 15, 1995. In addition, in determining the rate of return to be earned by X with respect to the nuclear power plant, the public utility commission assumes that the nuclear power plant will be included in rate base for each year in the period that begins with 2000 and ends with 2025.

(ii) X requests a schedule of ruling amounts in accordance with the rules of paragraph (h) of this section for the period beginning with the 1995 taxable year. In determining the level funding limitation period and the funding period, the Internal Revenue Service shall assume that a deductible payment will be made to a nuclear decommissioning fund for the 1995 taxable year. Thus, under paragraph (b) of this section, the level funding limitation period begins on January 1, 1995, and ends on December 31, 2025. Under paragraph (c)(1) of this section, the funding period begins on January 1, 1995, and ends on December 31, 2025.

(iii) In its request for a schedule of ruling amounts, X proposes a ruling amount for each taxable year in the funding period that corresponds to the projected cost of service amount for such taxable year. If (A) the assumptions and determinations used by the public utility commission in establishing the amount of decommissioning costs included in cost of service are reasonable and (B) the amounts collected pursuant to the proposed schedule, combined with the after-tax earnings on such amounts, will result in a projected balance of the nuclear decommissioning fund as of December 31, 2025, equal to the amount of decommissioning costs allocable to the fund, then, under paragraph (a)(3) of this section, each ruling amount in the initial schedule of ruling amounts shall equal the ruling amount proposed by X in connection with its request for a schedule of ruling amounts. Thus, the ruling amount for the 1995 taxable year would be $500,000, and the ruling amount for each subsequent taxable year would be 105 percent of the ruling amount for the preceding taxable year.

Example (2). (i) Assume the same facts as in Example (1), except that on May 15, 1995, the public utility commission of State A issues a final rate order for the four-year period beginning on January 1, 1995, that authorizes X to collect decommissioning costs of $600,000 per year from ratepayers residing in State A. In determining the amount of decommissioning costs to be collected from ratepayers residing in State A, the public utility commission assumes that decommissioning costs of $600,000 will be collected for each taxable year in the period that begins with 1995 and ends with 2004 and that decommissioning costs of $200,000 will be collected for each taxable year in the period that begins with 2005 and ends with 2025.

(ii) X requests a schedule of ruling amounts in accordance wtih the rules of paragraph (h) of this section for the period beginning with the 1995 taxable year. In determining the level funding limitation period and the funding period, the Internal Revenue Service shall assume that a deductible payment will be made to a nuclear decommissioning fund for the 1995 taxable year. Thus, under paragraph (b) of this section, the level funding limitation period begins on January 1, 1995, and ends on December 31, 2025. Under paragraph (c)(1) of this section, the funding period begins on January 1, 1995, and ends on December 31, 2025.

(iii) In its request for a schedule of ruling amounts, X proposes a ruling amount for each taxable year in the funding period that corresponds to the projected cost of service amount for such taxable year. A schedule of ruling amounts based on the projected cost of service amount would be inconsistent with the level funding limitation of paragraph (b) of this section because the projected cost of service amount for 2005 is less than the projected cost of service amount for 2004. Consequently, under paragraph (a)(3) of this section, no schedule of ruling amounts shall be provided to X unless X proposes an amended schedule of ruling amounts that is consistent with the level funding limitation and the other principles and provisions of this section.

(iv) Assume that X proposes an amended schedule of ruling amounts that provides for ruling amounts of $400,000 for each taxable year in the funding period. If (A) the schedule of ruling amounts proposed by X is based on the reasonable assumptions and determinations used by the public utility commission in establishing the amount of decommissioning costs included in cost of service and (B) the amounts collected pursuant to the proposed schedule, combined with the after-tax earnings on such amounts, will result in a projected balance of the nuclear decommissioning funds as of December 31, 2025, equal to the amount of decommissioning costs allocable to the fund, then, under paragraph (a)(3) of this section, each ruling amount in the initial schedule of ruling amounts shall equal the ruling amount proposed by X in connection with its request for a schedule of ruling amounts. Thus, the ruling amount for the 1995 taxable year and for each subsequent taxable year through 2025 would be $400,000.

(v) Under section 468A(b) and paragraph (b)(1) of § 1.46A–2T, the maximum amount of cash payments that X can make to a nuclear decommissioning fund for any taxable year shall not exceed the lesser of (A) the cost of service amount for such taxable year or (B) the ruling amount for such taxable year. If the projected cost of service amount that was assumed in determining rates under the rate order that was issued on May 15, 1995, is the actual cost of service amount for each taxable year in the funding period and the ruling amounts provided in the initial schedule of ruling amounts are not changed by a subsequent schedule of ruling amounts, then X would be allowed to make a deductible contribution of $400,000 to a nuclear decommissioning fund for each taxable year in the period that begins with 1995 and ends with 2004 and to make a deductible contribution of $200,000 to such nuclear decommissioning fund for each taxable year in the period that begins with 2005 and ends with 2025.

Example (3). (i) Y corporation is a calendar year, accrual method taxpayer engaged in the sale of electric energy generated by power plants owned by Y. On June 1, 1990, a nuclear power plant owned by Y began commercial operations in State B. In the first ratemaking proceeding in which the nuclear power plant was included in rate base, the public utility commission of State B assumed that the

nuclear power plant would be included in rate base for each year in the period that began with 1990 and ended with 2020. In addition, for each taxable year in the period that began with 1990 and ended with 2017, Y made a deductible contribution of $750,000 to a nuclear decommissioning fund established by Y. The $750,000 contribution equalled the cost of service amount and the ruling amount for each taxable year in the 27-year period.

(ii) On August 30, 2017, the public utility commission of State B issues a final rate order for the six-year period beginning on January 1, 2018, that authorizes Y to collect decommissioning costs of: (A) $500,000 for 2018, 2019 and 2020; (B) $1,500,000 for 2021; (C) $1,000,000 for 2022; and (D) $750,000 for 2023. In determining the amount of decommissioning costs to be collected from ratepayers residing in State B, the public utility commission assumes that decommissioning costs will no longer be included in cost of service after 2023. In addition, in determining the rate of return to be earned by Y with respect to the nuclear power plant, the public utility commission assumes that the nuclear power plant will no longer be included in rate base after 2020.

(iii) Under paragraph (i)(1) of this section, Y is required to request a revised schedule of ruling amounts on or before June 29, 2018. Assume that on March 15, 2018, Y requests a revised schedule of ruling amounts in accordance with the rules of paragraph (h) of this section. In its request, Y proposes a ruling amount for each taxable year in the period that begins with 2018 and ends with 2023 that corresponds to the amount of decommissioning costs to be including in cost of service under the rate order of August 30, 2017.

(iv) Under paragraph (b) of this section, the level funding limitation period begins on January 1, 1990, and ends on December 31, 2020. Under paragraph (c)(1) of this section, the funding period begins on January 1, 1990, and ends on December 31, 2023.

(v) If (A) the assumptions and determinations used by the public utility commission in establishing the amount of decommissioning costs included in cost of service are reasonable and (B) the projected balance of the nuclear decommissioning fund as of December 31, 2023 (taking into account the fair market value of the assets of the fund as of January 1, 2018, and the estimated after-tax rate of return to be earned by the assets of the fund) will equal the amount of decommissioning costs allocable to the fund, then, under paragraph (a)(3) of this section, each ruling amount in the revised schedule of ruling amounts shall equal the ruling amount proposed by Y in connection with its request for a schedule of ruling amounts. Thus, the ruling amount for 2018, 2019 and 2020 would be $500,000, the ruling amount for 2021 would be $1,500,000, the ruling amount for 2022 would be $1,000,000 and the ruling amount for 2023 would be $750,000. Although the ruling amount specified in the revised schedule of ruling amounts for 2018, 2019 and 2020 is less than a ruling amount specified in a prior schedule of ruling amounts for years prior to 2018, the revised schedule of ruling amounts is consistent with the level funding limitation. Under paragraph (i)(3) of this section, a ruling amount specified in a revised schedule of ruling amounts for any taxable year in the level funding limitation period can be less than one or more ruling amounts specified in a prior schedule of ruling amounts for a prior taxable year. In addition, although the ruling amount specified in the revised schedule of ruling amounts for 2021, 2022 and 2023 is less than a ruling amount specified in such schedule for a prior taxable year, the revised schedule of ruling amounts is consistent with the level funding limitation because the level funding limitation period ends on December 31, 2020.

(d) *Decommissioning costs allocable to a fund.* The amount of decommissioning costs allocable to a nuclear decommissioning fund is determined for purposes of this section by applying the following rules and definitions:

(1) *General rule.* The amount of decommissioning costs allocable to a nuclear decommissioning fund is the taxpayer's share of the total estimated cost of decommissioning the nuclear power plant to which the fund relates, multiplied by the qualifying percentage.

(2) *Total estimated cost of decommissioning.* (i) The total estimated cost of decommissioning a nuclear power plant is the reasonably estimated cost of decommissioning used by the applicable public utility commission in establishing or approving the amount of decommissioning costs included in cost of service for ratemaking purposes. If the estimated costs used by the applicable public utility commission are expected to be paid in any taxable year other than the taxable year that includes the last day of the funding period or the immediately succeeding taxable year, such costs must be adjusted (decreased or increased, as the case may be) by discounting or compounding such costs at the assumed after-tax rate of return from the date such costs are expected to be paid to the last day of the funding period.

(3) *Taxpayer's share.* The taxpayer's share of the total estimated cost of decommissioning a nuclear power plant equals the total estimated cost of decommissioning such nuclear power plant multiplied by the percentage of such nuclear power plant that is directly owned by the taxpayer (see paragraph (b)(1) of § 1.468A–1T for circumstances in which a taxpayer possesses a direct ownership interest in a nuclear power plant).

(4) *Qualifying percentage.* (i) Except as otherwise provided in paragraph (b)(5)(i) of § 1.468–8T (relating to a special transitional rule), the qualifying percentage for any nuclear decommissioning fund is equal to the fraction, the numerator of which is the number of taxable years in the estimated period for which the nuclear decommissioning fund is to be in effect and the denominator of which is the number of taxable years in the estimated useful life of the applicable nuclear power plant.

(ii) Except as otherwise provided in paragraph (b)(5) (ii) of § 1.468–8T (relating to a special transitional rule), the estimated period for which a nuclear decommissioning fund is to be in effect—

(A) Begins on the later of—

(*1*) The first day of the first taxable year for which a deductible payment is made (or deemed made) to such nuclear decommissioning fund; or

(*2*) The first day of the taxable year that includes the date that the nuclear power plant to which such nuclear decommissioning fund relates begins commercial operations; and

(B) Ends on the first day of the taxable year that includes the estimated date on which the nuclear power plant to which such nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes (see paragraph (e)(3) of this section).

(iii) The estimated useful life of a nuclear powerplant—

(A) Begins on the first day of the taxable year that includes the date that the nuclear power plant begins commercial operations; and

(B) Ends on the first day of the taxable year that includes the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes (see paragraph (e)(3) of this section).

(e) *Determination of estimated dates.* (1) For purposes of paragraph (c)(1)(ii)(A) of this section (relating to the funding period), the estimated date on which decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's cost of service for ratemaking purposes is determined under the ratemaking assumptions that were used to determine the last rates (whether interim or final) that were established or approved by the applicable public utility commission prior to the filing of the current request for a schedule of ruling amounts.

(2) For purposes of paragraph (b)(2)(ii) and (c)(1)(ii)(B) of this section (relating to the level funding limitation period and the funding period), the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes is determined

under the rulemaking assumptions that were used to determine the last rates (whether interim or final) that were established or approved by the applicable public utility commission prior to the filing of the current request for schedule of ruling amounts.

(3) For purposes of paragraph (d)(4)(ii)(B) of this section (relating to the qualifying percentage), the estimated date on which the nuclear power plant to which the nuclear decommissioning fund relates will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

(f) *Special rules in the case of rates established or approved by two or more public utility commissions.* If two or more public utility commissions establish or approve rates for electric energy generated by a single nuclear power plant, the following rules shall apply in determining the schedule of ruling amounts for the nuclear decommissioning fund that relates to such nuclear power plant:

(1) A schedule of ruling amounts shall be separately determined pursuant to the rules of paragraphs (a) through (e) of this section for each public utility commission that has determined the amount of decommissioning costs to be included in cost of service for ratemaking purposes with respect to such nuclear power plant (see paragraph (g) of this section).

(2) The separate determination with respect to a public utility commission shall be based on the reasonable assumptions and determinations used by such public utility commission and shall take into account only that portion of the total estimated cost of decommissioning the nuclear power plant that is properly allocable to the ratepayers whose rates are established or approved by such public utility commission.

(3) The ruling amount applicable to the nuclear decommissioning fund for any taxable year is the sum of the ruling amounts for such taxable year determined under the separate schedules of ruling amounts.

(4) The schedule of ruling amounts for the nuclear decommissioning fund is the schedule of the ruling amounts determined under paragraph (f)(3) of this section.

(g) *Requirement of determination by public utility commission of decommissioning costs to be included in cost of service.* The Internal Revenue Service will not provide a taxpayer with a schedule of ruling amounts for any nuclear decommissioning fund unless a public utility commission that establishes or approves rates for electric energy generated by the nuclear power plant to which the nuclear decommissioning fund relates has determined the amount of decommissioning costs of such nuclear power plant to be included in the taxpayer's cost of service for ratemaking purposes.

(h) *Manner of requesting schedule of ruling amounts*—(1) *In general.* (i) In order to receive a ruling amount for any taxable year, a taxpayer must file a request for a schedule of ruling amounts that complies with the requirements of this paragraph (h), the applicable procedural rules set forth in paragraph (e) of § 601.201 (Statement of Procedural Rules) and the requirements of any applicable revenue procedure that is in effect on the date the request is filed.

(ii) A separate request for a schedule of ruling amounts is required for each nuclear decommissioning fund established by a taxpayer (see paragraph (a) of § 1.468A–5T for rules relating to the number of nuclear decommissioning funds that a taxpayer can establish).

(iii) A request for a schedule of ruling amounts must not contain a request for a ruling on any other issue, whether the issue involves section 468A or another section of the Internal Revenue Code.

(iv) A request for a schedule of ruling amounts must be mailed or delivered to the Internal Revenue Service, Associate Chief Council (Technical), Attention CC:C:E, 1111 Constitution Avenue NW., Washington, DC 20224.

(v) Except as otherwise provided in paragraph (b)(1) of § 1.468A–8T, the Internal Revenue Service shall not provide a taxpayer with a ruling amount applicable to any taxable year that ends before the taxable year in which a request for a schedule of ruling amounts is filed. In addition, except as otherwise provided in paragraph (b)(1) of § 1.468A–8T, a taxpayer should file a request for a schedule of ruling amounts on or before the 180th day of a taxable year to assure receipt of the schedule of ruling amounts on or before the deemed payment deadline date (within the meaning of paragraph (c)(1) of § 1.468A–2T) applicable to such taxable year. If a request for a schedule of ruling amounts (other than a request required by reason of an election under paragraph (f)(2) of § 1.468A–2T) is filed after the 180th day of a taxable year, the Internal Revenue Service may be unable to provide the taxpayer with a schedule of ruling amounts on or before the deemed payment deadline date applicable to such taxable year. In determining the date when a request is filed, the principles of sections 7502 and 7503 shall apply.

(vi) Except as provided in paragraph (h)(1)(vii) of this secton, a request for a schedule of ruling amounts shall be considered filed only if such request complies substantially with the requirements of this paragraph (h).

(vii) If a request does not comply substantially with the requirements of this paragraph (h), the Internal Revenue Service shall notify the taxpayer of this fact. If the information or materials necessary to comply substantially with the requirements of this paragraph (h) are provided to the Internal Revenue Service within 60 days after such notification, the request shall be considered filed on the date of original submission. If the information or materials necessary to comply substantially with the requirements of this paragraph (h) are not provided within 60 days after such notification, the request shall be considered filed on the date that all information or materials necessary to comply substantially with the requirements of this paragraph (h) are provided.

(2) *Information required.* A request for a schedule of ruling amounts must contain the following information:

(i) The taxpayer's name, address and taxpayer identification number.

(ii) Whether the request is for an initial schedule of ruling amounts, a mandatory review of the schedule of ruling amounts (see paragraph (i)(1) of this section) or an elective review of the schedule of ruling amounts (see paragraph (i)(2) of this section).

(iii) The name and location of the nuclear power plant with respect to which a schedule of ruling amounts is requested.

(iv) A description of the taxpayer's ownership interest in the nuclear power plant and the percentage of such nuclear power plant that is directly owned by the taxpayer.

(v) An identification of each public utility commission that establishes or approves rates for the furnishing or sale by the taxpayer of electric energy generated by the nuclear power plant and, for each public utility commission identified—

(A) Whether the public utility commission has determined the amount of decommissioning costs to be included in the taxpayer's cost of service for ratemaking purposes; and

(B) Whether a proceeding is pending before the public utility commission that

may result in an increase or decrease in the amount of decommissioning costs included in the taxpayer's cost of service.

(vi) For each public utility commission that has determined the amount of decommissioning costs to be included in the taxpayer's cost of service for ratemaking purposes—

(A) The amount of decommissioning costs that are to be included in the taxpayer's cost of service for each taxable year under the current determination;

(B) A description of the assumptions, estimates and other factors that were used in determining the amounts described in paragraph (h)(2)(vi)(A) of this section, including each of the following is applicable—

(*1*) A description of the proposed method of decommissioning the nuclear power plant (for example, prompt removal/dismantlement, safe storage entombment with delayed dismantlement, or safe storage mothballing with delayed dismantlement);

(*2*) The estimated year in which substantial decommissioning costs will first be incurred;

(*3*) The estimated year in which the decommissioning of the nuclear power plant will be substantially complete (see paragraph (d)(2) of § 1.468A–5T for a definition of substantial completion of decommissioning);

(*4*) The total estimated cost of decommissioning expressed in current dollars (*i.e.*, based on price levels on the date that the request for a schedule of ruling amounts is made);

(*5*) The total estimated cost of decommissioning expressed in future dollars (*i.e.*, based on anticipated price levels when expenses are expected to be paid);

(*6*) For each taxable year in the period that begins with the year specified in paragraph (h)(2)(vi)(B)(*2*) of this section ("the estimated year in which substantial decommissioning costs will first be incurred") and ends with the year specified in paragraph (h)(2)(vi)(B)(*3*) of this section ("the estimated year in which the decommissioning of the nuclear power plant will be substantially complete"), the estimated cost of decommissioning expressed in future dollars;

(*7*) A description of the methodology used in converting the estimated cost of decommissioning expressed in current dollars to the estimated cost of decommissioning expressed in future dollars;

(*8*) The assumed after-tax rate of return to be earned by the amounts collected for decommissioning;

(*9*) The proposed period over which decommissioning costs will be included in the cost of service of the taxpayer and the projected amount that will be included in cost of service for each taxable year in the proposed period;

(*10*) The estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes as determined under the ratemaking assumptions that were used to determine the last rates (whether interim or final) that were established or approved by the applicable public utility commission prior to the filing of the current request for a schedule of ruling amounts; and

(*11*) The estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes as determined under the ratemaking assumptions that were used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

(C) A copy of the public utility commission's most recent determination that includes decommissioning costs in cost of service; and

(D) A copy of each engineering or cost study that was relied on or used by the taxpayer or the public utility commission in determining the amount of decommissioning costs to be included in the taxpayer's cost of service under the current determination.

(vii) For each proceeding pending before a public utility commission that may result in an increase or decrease in the amount of decommissioning costs included in the taxpayer's cost of service—

(A) A description of the stage of the proceeding;

(B) The amount of decommissioning costs that are proposed to be included in the taxpayer's cost of service for each taxable year;

(C) A description of the assumptions, estimates and other factors that were used in determining the amount of decommissioning costs that are proposed to be included in the taxpayer's cost of service for each taxable year, including each of the items described in paragraph (h)(2)(vi)(B) of this section if applicable; and

(D) A copy of each engineering or cost study that was relied on or used by the taxpayer or the public utility commission in determining the amount of decommissioning costs that are proposed to be included in the taxpayer's cost of service.

(viii) A proposed schedule of ruling amounts for each taxable year remaining in the funding period as of the date the schedule of ruling amounts will first apply.

(ix) A description of the assumptions, estimates and other factors that were used in determining the proposed schedule of ruling amounts, including each of the following—

(A) The level funding limitation period (as such term is defined in paragraph (b)(2) of this section);

(B) The funding period (as such term is defined in paragraph (c) of this section);

(C) The assumed after-tax rate of return to be earned by the assets of the nuclear decommissioning fund;

(D) The fair market value of the assets (if any) of the nuclear decommissioning fund as of the first day of the first taxable year to which the schedule of ruling amounts will apply;

(E) The amount expected to be earned by the assets of the nuclear decommissioning fund (based on the after-tax rate of return applicable to the fund) over the period that begins on the first day of the first taxable year to which the schedule of ruling amounts will apply and ends on the last day of the funding period;

(F) The amount of decommissioning costs allocable to the nuclear decommissioning fund (as such term is defined in paragraph (d) of this section);

(G) The total estimated cost of the decommissioning (as such term is defined in paragraph (d)(2) of this section);

(H) The taxpayer's share of the total estimated cost of decommissioning (as such term is defined in paragraph (d)(3) of this section);

(I) The qualifying percentage (as such term is defined in paragraph (d)(4)(i) of this section);

(J) The estimated period for which the nuclear decommissioning fund is to be in effect (as such term is defined in paragraph (d)(4)(ii) of this section); and

(K) The estimated useful life of the nuclear power plant (as such term is defined in paragraph (d)(4)(iii) of this section).

(x) If applicable, an explanation of the need for a schedule of ruling amounts determined on a basis other than the rules of paragraphs (a) through (g) of this section and a description of an alternative basis for determining a schedule of ruling amounts (see paragraph (a)(3) of this section).

(xi) Any other information required by the Internal Revenue Service that may be necessary or useful in determining the schedule of ruling amounts.

(3) *Administrative procedures.* The Internal Revenue Service may prescribe

administrative procedures that supplement the provisions of paragraphs (h)(1) and (h)(2) of this section. In addition, the Internal Revenue Service, in its discretion, can waive the requirements of paragraph (h)(1) and (h)(2) under appropriate circumstances.

(i) *Review and revision of schedule of ruling amounts*—(1) *Mandatory review.* (i) Any taxpayer that has obtained a schedule of ruling amounts pursuant to paragraph (h) of this section must file a request for a revised schedule of ruling amounts on or before the 180th day of the 10th taxable year following the close of the taxable year in which the most recent schedule of ruling amounts was received. In addition, if any of the events specified in paragraph (i)(1)(iii) of this section occurs, the taxpayer must file a request for a revised schedule of ruling amounts on or before the 180th day of the taxable year following the taxable year in which the event occurs. See paragraph (f)(3) of § 1.468A–2T for an exception to the 180-day requirement in the case of certain retroactive adjustments to interim rate orders. See, also, paragraph (a)(2) of § 1.468A–6T for rules requiring a revised schedule of ruling amounts in the case of a sale, exchange or other disposition of a portion of an electing taxpayer's direct ownership interest in a nuclear power plant.

(ii) A request for a schedule of ruling amounts required by paragraph (i)(1)(i) of this section must be made in accordance with the rules of paragraph (h) of this section. If a taxpayer does not properly file a request for a revised schedule of ruling amounts by the date provided in paragraph (i)(1)(i) of this section or paragraph (f)(3) of § 1.468A–2T, the taxpayer's ruling amount for the taxable year this includes such date and for all succeeding taxable years until a new schedule is obtained shall be zero unless, in its discretion, the Internal Revenue Service provides otherwise in such new schedule of ruling amounts.

(iii) A taxpayer is required to request a revised schedule of ruling amounts in accordance with the rules of paragraph (h) of this section if—

(A) Any public utility commission that establishes or approves rates for the furnishing or sale of electric energy generated by a nuclear power plant to which a nuclear decommissioning fund relates increases the proposed period over which decommissioning costs of such nuclear power plant will be included in cost of service for ratemaking purposes and the Internal Revenue Service was not notified of the increase in the taxpayer's most recent request for a schedule of ruling amounts;

(B) Any public utility commission that establishes or approves rates for the furnishing or sale of electric energy generated by a nuclear power plant to which a nuclear decommissioning fund relates adjusts the estimated date on which such nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes and the Internal Revenue Service was not notified of the adjustment in the taxpayer's most recent request for a schedule of ruling amounts; or

(C) The cost of service amount applicable to the nuclear decommissioning fund for any taxable year (as defined in paragraph (b)(2) of § 1.468A–2T) is less than the cost of service amount applicable to the nuclear decommissioning fund for the immediately preceding taxable year and the Internal Revenue Service was not notified of the decrease in the taxpayer's most recent request for a schedule of ruling amounts.

(2) *Elective review.* Any taxpayer that has obtained a schedule of ruling amounts pursuant to paragraph (h) of this section can request a revised schedule of ruling amounts. Such a request must be made in accordance with the rules of paragraph (h) of this section; thus, the Internal Revenue Service generally will not provide a revised ruling amount applicable to any taxable year that ends before the taxable year in which the request for a revised schedule of ruling amounts is filed (see paragraph (h)(1)(v) of this section).

(3) *Determination of revised schedule of ruling amounts.* A revised schedule of ruling amounts for a nuclear decommissioning fund shall be determined under this section without regard to any schedule of ruling amounts for such nuclear decommissioning fund that was issued prior to such revised schedule. Thus, a ruling amount specified in a revised schedule of ruling amounts for any taxable year in the level funding limitation period can be less than one or more ruling amounts specified in a prior schedule of ruling amounts for a prior taxable year.

§ 1.468A–4T Treatment of nuclear decommissioning fund (temporary).

(a) *In general.* A nuclear decommissioning fund is subject to tax on all of its modified gross income (as defined in paragraph (b) of this section) for any taxable year at a single rate equal to the maximum rate in effect under section 11(b) (determined without regard to the amendment to section 11(b) made by the Tax Reform Act of 1984). Such tax is in lieu of any other tax that may be imposed under subtitle A of the Internal Revenue Code on the income earned by the assets of the nuclear decommissioning fund.

(b) *Modified gross income.* For purposes of this section, the term "modified gross income" means gross income as defined under section 61 computed with the following modifications:

(1) The amount of any payment to the nuclear decommissioning fund with respect to which a deduction is allowed under section 468(a) is excluded from gross income.

(2) A deduction is allowed for the amount of administrative costs and other incidental expenses of the nuclear decommissioning fund (including taxes, legal expenses, accounting expenses, actuarial expenses and trustee expenses, but not including decommissioning costs) that are otherwise deductible and that are paid by the nuclear decommissioning fund to any person other than the electing taxpayer. An expense is otherwise deductible for purposes of this paragraph (b)(2) if it would be deductible under chapter 1 of the Internal Revenue Code in determining the taxable income of a corporation. For example, because Federal income taxes are not deductible under chapter 1 of the Internal Revenue Code in determining the taxable income of a corporation, the tax imposed by section 468A(e)(2) and paragraph (a) of this section is not deductible in determining the modified gross income of a nuclear decommissioning fund. Similarly, because certain expenses allocable to tax-exempt interest income are not deductible under section 265 of the Internal Revenue Code in determining the taxable income of a corporation, such expenses are not deductible in determining the modified gross income of a nuclear decommissioning fund.

(3) A deduction is allowed for the amount of otherwise deductible losses that are sustained by the nuclear decommissioning fund in connection with the sale, exchange or worthlessness of an investment described in paragraph (a)(3)(i)(C) of § 1.468A–5T. A loss is otherwise deductible for purposes of this paragraph (b)(3) is such a loss would be deductible by a corporation under section 165 (f) or (g) and sections 1211(a) and 1212(a).

(4) A deduction is allowed for the amount of an otherwise deductible net operating loss of the nuclear decommissioning fund. For purposes of this paragraph, the net operating loss of a nuclear decommissioning fund for a taxable year is the amount by which the

deductions allowable under paragraph (b) (2) and (3) of this section exceed the gross income of the nuclear decommissioning fund computed with the modification described in paragraph (b)(1) of this section. A net operating loss is otherwise deductible for purposes of this paragraph (b)(4) if such a net operating loss would be deductible by a corporation under section 172(a).

(c) *Special rules*—(1) *Period for computation of modified gross income.* The modified gross income of a nuclear decommissioning fund must be computed on the basis of the taxable year of the electing taxpayer. If an electing taxpayer changes its taxable year, each nuclear decommissioning fund of the electing taxpayer must change to the new taxable year. See section 442 and § 1.442–1 for rules relating to the change to a new taxable year.

(2) *Recognition of gain or loss upon distribution of property by a fund.* A distribution of property by a nuclear decommissioning fund (whether an actual distribution or a deemed distribution) shall be considered a disposition of property by the nuclear decommissioning fund for purposes of section 1001. In determining the amount of gain or loss from such disposition, the amount realized by the nuclear decommissioning fund shall be the fair market value of the property on the date of disposition. Except as otherwise provided in paragraph (b)(3) of this section, a nuclear decommissioning fund must include in modified gross income the amount of any gain or loss realized on the disposition of the property notwithstanding any provision of the Internal Revenue Code that provides that the gain or loss is not realized or recognized.

(3) *Denial of credits against tax.* The tax imposed on the modified gross income of a nuclear decommissioning fund under paragraph (a) of this section is not to be reduced or offset by any credits against tax provided by part IV of subchapter A of chapter 1 of the Internal Revenue Code other than the credit provided by section 31(c) for amounts withheld under section 3406 (back-up withholding).

(4) *Other corporate taxes inapplicable.* Although the modified gross income of a nuclear decommissioning fund is subject to tax at a rate equal to the maximum rate in effect under section 11(b) (determined without regard to the amendment to section 11(b) made by the Tax Reform Act of 1984), a nuclear decommissioning fund is not subject to the other taxes imposed on corporations under subtitle A of the Internal Revenue Code. For example, a nuclear decommissioning fund is not subject to the corporate minimum tax imposed by section 56, the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, and the alternative tax imposed on a corporation under section 1201(a).

(d) *Treatment as corporation for purposes of subtitle F.* For purposes of subtitle F of the Internal Revenue Code and the regulations thereunder, a nuclear decommissioning fund is to be treated as if it were a corporation and the tax imposed by section 468A(e)(2) and paragraph (a) of this section is to be treated as a tax imposed by section 11. Thus, for example, the following rules apply:

(1) A nuclear decommissioning fund must file a return with respect to the tax imposed by section 468A(e)(2) and paragraph (a) of this section for each taxable year (or portion thereof) that the fund is in existence even though no amount is included in the gross income of the fund for such taxable year. The return is to be made on Form 1120–ND. For purposes of this paragraph (d)(1), a nuclear decommissioning fund is in existence for the period that—

(i) Begins on the date that the first deductible payment is actually made to such nuclear decommissioning fund; and

(ii) Ends on the date of termination (see paragraph (d) of § 1.468A–5T), the date of disqualification (see paragraph (c) of § 1.468A–5T) or the date that the electing taxpayer disposes of its entire direct ownership interest in the nuclear power plant to which the nuclear decommissioning fund relates (see paragraph (a) of § 1.468A–6T), whichever is applicable.

(2) For each taxable year of the nuclear decommissioning fund, the return described in paragraph (d)(1) of this section must be filed on or before the 15th day of the third month following the close of such taxable year unless the nuclear decommissioning fund is granted an extension of time for filing under section 6081. If such an extension is granted for any taxable year, the return for such taxable year must be filed on or before the extended due date for such taxable year. In no event will the filing of the initial return of a nuclear decommissioning fund be required before January 6, 1987.

(3) A nuclear decommissioning fund must provide its employer identification number on returns, statements and other documents as required by the forms and instructions relating thereto. The employer identification number is obtained by filing a Form SS–4 in accordance with the instructions relating thereto.

(4) A nuclear decommissioning fund must make payments of estimated tax during its taxable year as provided in section 6154(b) if its estimated tax for such taxable year can reasonably be expected to be $40 or more. For purposes of section 6154 and this section, the estimated tax of a nuclear decommissioning fund for any taxable year is the amount that the nuclear decommissioning fund estimates as the amount of tax imposed by section 468A(e)(2) and paragraph (a) of this section for such taxable year.

(5) A nuclear decommissioning fund must deposit all payments of tax imposed by section 468A(e)(2) and paragraph (a) of this section (including any payments of estimated tax) with an authorized government depositary in accordance with § 1.6302–1.

(6) A nuclear decommissioning fund is subject to the addition to tax imposed by section 6655 in case of a failure to pay estimated income tax. For purposes of section 6655 and this section—

(i) The tax with respect to which the amount of the underpayment is computed in the case of a nuclear decommissioning fund is the tax imposed by section 468A(e)(2) and paragraph (a) of this section; and

(ii) A nuclear decommissioning fund is to be considered a large corporation under section 6655(i) if such nuclear decommissioning fund had modified gross income (as defined in paragraph (b) of this section) of $1,000,000 or more for any taxable year during the testing period.

§ 1.468A–5T Nuclear decommissioning fund qualification requirements; prohibitions against self-dealing; disqualification of nuclear decommissioning fund; and termination of fund upon substantial completion of decommissioning (temporary).

(a) *Qualification requirements*—(1) *In general.* A nuclear decommissioning fund must be a trust established or organized and maintained at all times in the United States for the exclusive purpose of providing funds for the decommissioning of a nuclear power plant. A separate nuclear decommissioning fund is required for each electing taxpayer and for each nuclear power plant with respect to which an electing taxpayer possesses a direct ownership interest. An electing taxpayer can maintain only one nuclear decommissioning fund for each nuclear power plant with respect to which the taxpayer elects the application of section 468A.

(2) *Limitation on contributions.* Except as otherwise provided in paragraph (b)(1)(ii) of § 1.468A–6T

(relating to the acquisition of an interest in a nuclear power plant from a taxpayer that maintained a nuclear decommissioning fund with respect to such nuclear power plant), a nuclear decommissioning fund is not permitted to accept any contributions in cash or property other than cash payments with respect to which a deduction is allowed under section 468A(a) and paragraph (a) of § 1.468A–2T. Thus, for example, securities may not be contributed to a nuclear decommissioning fund even if the taxpayer or a fund established by the taxpayer previously held such securities for the purpose of providing funds for the decommissioning of a nuclear power plant.

(3) *Limitation on use of fund*—(i) *In general.* The assets of a nuclear decommissioning fund are to be used exclusively—

(A) To satisfy, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates;

(B) To pay administrative costs and other incidental expenses of the nuclear decommissioning fund; and

(C) To the extent that the assets of the nuclear decommissioning fund are not currently required for the purposes described in paragraph (a)(3)(i) (A) or (B) of this section, to invest in—

(*1*) Public debt securities of the United States;

(*2*) Obligations of a State or local government that are not in default as to principal or interest; or

(*3*) Time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(7) (1982)), located in the United States.

(ii) *Terms defined.* For purposes of paragraph (a)(3)(i) of this section:

(A) The term "administrative costs and other incidental expenses of a nuclear decommissioning fund" means all ordinary and necessary expenses incurred in connection with the operation of the nuclear decommissioning fund. Such term includes the tax imposed by section 468A(e)(2) and paragraph (a) of § 1.468A–4T, any State or local tax imposed on the income or the assets of the fund, legal expenses, accounting expenses, actuarial expenses and trustee expenses. Such term does not include decommissioning costs. Such term also does not include the excise tax imposed on the trustee or other disqualified person under section 4951 or the reimbursement of any expenses incurred in connection with the assertion of such tax unless such expenses are considered reasonable and necessary under section 4951(d)(2)(C) and it is determined that the trustee or other disqualified person is not liable for the excise tax.

(B) The term "public debt securities of the United States" means obligations that are taken into consideration for purposes of the public debt limit.

(C) The term "obligations of a State or local government" means the obligations of a State or local governmental unit the interest on which is exempt from tax under section 103(a).

(D) The term "time or demand deposits" includes checking accounts, savings accounts, certificates of deposit or other time or demand deposits. The term does not include common or collective trust funds, such as a common trust fund as defined in section 584.

(b) *Prohibitions against self-dealing*—(1) *In general.* Except as otherwise provided in this paragraph (b), the excise taxes imposed by section 4951 shall apply to each act of self-dealing between a disqualified person and a nuclear decommissioning fund.

(2) *Self-dealing defined.* For purposes of this paragraph (b), the term "self-dealing" means any act described in section 4951 (d), except—

(i) A payment by a nuclear decommissioning fund for the purpose of satisfying, in whole or in part, the liability of the electing taxpayer for decommissioning costs of the nuclear power plant to which the nuclear decommissioning fund relates;

(ii) A withdrawal of an excess contribution by the electing taxpayer pursuant to the rules of paragraph (c)(2) of this section;

(iii) A payment of amounts remaining in a nuclear decommissioning fund to the electing taxpayer after the termination of such fund (as determined under paragraph (d) of this section); or

(iv) Any act described in section 4951(d)(2) (B) or (C).

(3) *Disqualified person defined.* For purposes of this paragraph (b), the term "disqualified person" includes each person described in section 4951(e)(4) and paragraph (d) of § 53.4951–1.

(c) *Disqualification of nuclear decommissioning fund*—(1) *In general.* Except as otherwise provided in paragraph (c)(2) of this section, if at any time during a taxable year of a nuclear decommissioning fund—

(i) The nuclear decommissioning fund does not satisfy the requirements of paragraph (a) of this section, or

(ii) The nuclear decommissioning fund and a disqualified person engage in an act of self-dealing (as defined in paragraph (b)(2) of this section), The Internal Revenue Service may, in its discretion, disqualify all or any portion of the fund as of the date that the fund does not satisfy the requirements of paragraph (a) of this section or the date on which the act of self-dealing occurs, whichever is applicable, or as of any subsequent date ("date of disqualification"). The Internal Revenue Service shall notify the electing taxpayer of the disqualification of a nuclear decommissioning fund and the date of disqualification by registered or certified mail to the last known address of the electing taxpayer (the "notice of disqualification").

(2) *Exception to disqualification*—(i) *In general.* A nuclear decommissioning fund will not be disqualified under paragraph (c)(1) of this section by reason of an excess contribution or the withdrawal of such excess contribution by an electing taxpayer if the amount of the excess contribution is withdrawn by the electing taxpayer on or before the date prescribed by law (including extensions) for filing the return of the nuclear decommissioning fund for the taxpayer year to which the excess contribution relates.

(ii) *Excess contribution defined.* For purposes of this section, an excess contribution is the amount by which cash payments made (or deemed made) to a nuclear decommissioning fund during any taxable year exceed the payment limitation contained in section 468A(b) and paragraph (b) of § 1.468A–2T.

(iii) *Taxation of income attributable to an excess contribution.* The income of a nuclear decommissioning fund attributable to an excess contribution is required to be included in the gross income of the nuclear decommissioning fund under paragraph (b) of § 1.468A–4T.

(3) *Effect of disqualification.* If all or any portion of a nuclear decommissioning fund is disqualified under paragraph (c)(1) of this section, the portion of the nuclear decommissioning fund that is disqualified is treated as distributed to the electing taxpayer on the date of disqualification. Such a distribution shall be treated for purposes of section 1001 as a disposition of property held by the nuclear decommissioning fund (see paragraph (c)(2) of § 1.468A–4T). In addition, the electing taxpayer must include in gross income for the taxable year that includes the date of disqualification an amount equal to the product of—

(i) The fair market value of the assets of the fund determined as of the date of disqualification, reduced by—

(A) The amount of any excess contribution that was not withdrawn before the date of disqualification if no deduction was allowed with respect to such excess contribution; and

(B) The amount of any deemed distribution that was not actually distributed before the date of disqualification (as determined under paragraph (c)(2)(iii) of § 1.468A–2T) if the amount of the deemed distribution was included in the gross income of the electing taxpayer for the taxable year in which the deemed distribution occurred; and

(ii) The fraction of the nuclear decommissioning fund that was disqualified under paragraph (c)(1) of this section.

Contributions made to a disqualified fund after the date of disqualification are not deductible under section 468A(a) and paragraph (a) of § 1.468A–2T, or if the fund is disqualified only in part, are deductible only to the extent provided in the notice of disqualification. In addition, if any assets of the fund that are deemed distributed under this paragraph (c)(3) are held by the fund after the date of disqualification (or if additional assets are acquired with nondeductible contributions made to the fund after the date of disqualification), the income earned by such assets after the date of disqualification must be included in the gross income of the electing taxpayer (see section 671) to the extent that such income is otherwise includible under chapter 1 of the Internal Revenue Code. An electing taxpayer can establish a nuclear decommissioning fund to replace a fund that has been disqualified in its entirety only if the Internal Revenue Service specifically consents to the establishment of a replacement fund in connection with the issuance of an initial schedule of ruling amounts for such replacement fund.

(d) *Termination of nuclear decommissioning fund upon substantial completion of decommissioning*—(1) *In general.* Upon substantial completion of the decommissioning of a nuclear power plant to which a nuclear decommissioning fund relates, such nuclear decommissioning fund shall be considered terminated and treated as having distributed all of its assets on the date the termination occurs. Such a distribution shall be treated for purposes of section 1001 as a disposition of property held by the nuclear decommissioning fund (see paragraph (c)(2) of § 1.468A–4T). In addition, unless the exception provided in paragraph (d)(2)(iv) of § 1.468A–2T applies, the electing taxpayer shall include in gross income for the taxable year in which the termination occurs an amount equal to the fair market value of the assets of the fund determined as of the date of termination. Contributions made to a nuclear decommissioning fund after the termination date are not deductible under section 468A(a) and paragraph (a) of § 1.468A–2T. In addition, if any assets are held by the fund after the termination date, the income earned by such assets after the termination date must be included in the gross income of the electing taxpayer (see section 671) to the extent that such income is otherwise includible under chapter 1 of the Internal Revenue Code. Finally, an electing taxpayer using an accrual method of accounting is allowed a deduction for nuclear decommissioning costs that are incurred during any taxable year (see paragraph (e) of § 1.468A–2T) even if such costs are incurred after substantial completion of decommissioning (*e.g.*, expenses incurred to monitor or safeguard the plant site).

(2) *Substantial completion of decommissioning defined.* (i) For purposes of this paragraph (d), the substantial completion of the decommissioning of a nuclear power plant occurs at the time that the maximum acceptable radioactivity levels mandated by the Nuclear Regulatory Commission (or its successor) with respect to a decommissioned nuclear power plant are satisfied.

(ii) The Internal Revenue Service may prescribe administrative procedures that clarify the definition of substantial completion of decommissioning to take into account technological change or amendments to the rules issued by the Nuclear Regulatory Commission (or its successor).

§ 1.468A–6T Disposition of an interest in a nuclear power plant (temporary).

(a) *Treatment of selling taxpayer*—(1) *In general.* In the case of any sale, exchange or other disposition of any portion of a direct ownership interest in a nuclear power plant with respect to which the taxpayer maintains a nuclear decommissioning fund, the portion of the nuclear decommissioning fund that relates to the direct ownership interest sold, exchanged or otherwise disposed of is treated as distributed to the taxpayer on the date of such disposition. (Such a distribution shall be treated for purposes of section 1001 as a disposition of property held by the nuclear decommissioning fund (see paragraph (c)(2) of § 1.468A–4T)). In addition, the electing taxpayer must include in gross income for the taxable year in which the disposition of the interest in the nuclear power plant occurs an amount equal to the product of—

(i) The fair market value of the assets of the fund determined as of the date of disposition, reduced by—

(A) The amount of any excess contribution that was not withdrawn before the date of disposition if no deduction was allowed with respect to such excess contribution; and

(B) The amount of any deemed distribution that was not actually distributed before the date of disposition (as determined under paragraph (c)(2)(iii) of § 1.468A–2T) if the amount of the deemed distribution was included in the gross income of the electing taxpayer for the taxable year in which the deemed distribution occurred; and

(ii) The fraction of the taxpayer's direct ownership interest sold, exchanged or otherwise disposed of in such transaction.

Such amount must be included in gross income even if no gain was recognized or realized on the sale, exchange or other disposition of the interest in the nuclear power plant. Thus, for example, such amount must be included in gross income even if the exchange of the interest in the nuclear power plant is described in section 351, 368, 721 or 1031. In addition, if any assets of the fund that are deemed distributed under this paragraph (a)(1) are held by the fund after the date of disposition, the income earned by such assets after the date of disposition must be included in the gross income of the taxpayer (see section 671) to the extent that such income is otherwise includible under chapter 1 of the Internal Revenue Code.

(2) *Revised schedule of ruling amounts required.* If the taxpayer retains a direct ownership interest in the nuclear power plant after the sale, exchange or other disposition of a portion of its former direct ownership interest and does not file a request for a revised schedule of ruling amounts on or before the 90th day after the date of disposition, the ruling amount applicable to the nuclear decommissioning fund to which the nuclear power plant relates for the taxable year in which such disposition occurs and all succeeding taxable years until a new schedule is obtained shall be zero unless, in its discretion, the Internal Revenue Service provides otherwise in such new schedule of ruling amounts.

(b) *Treatment of purchasing taxpayer*—(1) *In general.* (i) A taxpayer that purchases or otherwise acquires a direct ownership interest in a nuclear

power plant (a "purchasing taxpayer") from a taxpayer that on the date of acquisition maintains a nuclear decommissioning fund with respect to such nuclear power plant can elect to make a deductible contribution to a nuclear decommissioning fund established by the purchasing taxpayer in an amount not greater than the amount included in the gross income of the selling taxpayer under paragraph (a)(1) of this section. Such contribution must be made (or deemed made under paragraph (c)(1) of § 1.468A–2T) during the purchasing taxpayer's taxable year in which the date of acquisition occurs. The amount of any contribution made to a nuclear decommissioning fund pursuant to this paragraph (b)(1)(i) is not taken into account in applying the payment limitation of paragraph (b) of § 1.468A–2T and the taxpayer is not required to obtain a ruling amount with respect to such contribution.

(ii) A deductible contribution made by a purchasing taxpayer under paragraph (b)(1)(i) of this section may be made in cash. In addition, for purposes of paragraph (b)(1)(i) of this section only, a purchasing taxpayer may contribute property described in paragraph (a)(3)(i)(C) of § 1.468A–5T to a nuclear decommissioning fund established by the purchasing taxpayer if the property—

(A) Was owned by the nuclear decommissioning fund of the selling taxpayer immediately before the sale, exchange or other disposition of an interest in the nuclear power plant;

(B) Was distributed to the selling taxpayer under paragraph (a)(1) of this section; and

(C) Was acquired by the purchasing taxpayer as part of the same transaction in which the interest in the nuclear power plant was acquired.

If the purchasing taxpayer contributes property to a nuclear decommissioning fund under this paragraph (b)(1)(ii), the amount of the contribution (and the basis of the property to the nuclear decommissioning fund) shall equal the fair market value of the property on the date that the property was distributed to the selling taxpayer under paragraph (a)(1) of this section and no gain or loss shall be recognized by the purchasing taxpayer with respect to the transfer of the property to the nuclear decommissioning fund. In addition, no gain or loss shall be recognized by the selling taxpayer with respect to the transfer of such property to the purchasing taxpayer, even if the purchasing taxpayer does not contribute the property to a nuclear decommissioning fund. The nuclear decommissioning fund of the selling taxpayer shall recognize gain or loss on the distribution of such property by the fund (see paragraph (a)(1) of this section). Finally, if the purchasing taxpayer does not contribute the property to a nuclear decommissioning fund under this paragraph (b)(1)(ii), the basis of the property to the purchasing taxpayer shall be the fair market value of the property on the date that the property was distributed to the selling taxpayer under paragraph (a)(1) of this section.

(iii) Except as provided in paragraph (b)(1)(i) of this section, a purchasing taxpayer is allowed a deduction under section 468A(a) for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to a nuclear decommissioning fund only if the taxpayer has received a schedule of ruling amounts for the nuclear decommissioning fund that includes a ruling amount for such taxable year (see § 1.468A–3T).

(2) *Manner of making election.* A purchasing taxpayer is allowed a deduction under paragraph (b)(1)(i) of this section only if the Election Statement (as required by § 1.468A–7T) for the taxable year in which the acquisition occurs indicates that an election is made under paragraph (b) of § 1.468A–6T. In addition, the Election Statement must include—

(i) The name, address and taxpayer identification number of the selling taxpayer;

(ii) The date of the sale, exchange or other disposition;

(iii) The amount included in the gross income of the selling taxpayer under paragraph (a) of this section;

(iv) The amount of the cash payment made (or deemed made) to the nuclear decommissioning fund pursuant to this paragraph (b); and

(v) The fair market value of the property contributed to the nuclear decommissioning fund pursuant to paragraph (b)(1)(ii) of this section determined as of the date that the property was distributed to the selling taxpayer.

§ 1.468A–7T Manner of and time for making election (temporary).

(a) *In general.* An eligible taxpayer is allowed a deduction for the taxable year in which the taxpayer makes a cash payment (or is deemed to make a cash payment) to the nuclear decommissioning fund only if the taxpayer elects the application of section 468A. A separate election under section 468A is required for each nuclear power plant and for each taxable year with respect to which a deductible cash payment is made to a nuclear decommissioning fund. The election under section 468A for any taxable year is irrevocable and must be made by attaching a statement ("Election Statement") and a copy of the schedule of ruling amounts provided pursuant to the rules of § 1.468A–3T to the taxpayer's Federal income tax return for such taxable year. Except as otherwise provided in paragraph (b)(3) of § 1.468A–6T, the return to which the Election Statement and a copy of the schedule of ruling amounts is attached must be filed on or before the time prescribed by law (including extensions) for filing the return for the taxable year with respect to which section 468A is to apply.

(b) *Required information.* The Election Statement must include the following information:

(1) The legend "Election Under Section 468A" typed or legibly printed at the top of the first page.

(2) The taxpayer's name, address and taxpayer identification number.

(3) The taxable year for which the election is made.

(4) For each nuclear power plant with respect to which an election is made—

(i) The name and location of the nuclear power plant;

(ii) The name and employer identification number of the nuclear decommissioning fund;

(iii) The total amount of actual cash payments made to the nuclear decommissioning fund during the taxable year that were not treated as deemed cash payments under paragraph (c)(1) of § 1.468A–2T for a prior taxable year;

(iv) The total amount of cash payments deemed made to the nuclear decommissioning fund under paragraph (c)(1) of § 1.468A–2T for the taxable year; and

(v) The cost of service amount for the taxable year (see paragraph (b)(2) of § 1.468A–2T).

§ 1.468A–8T Effective date and transitional rules (temporary).

(a) *Effective date*—(1) *In general.* Section 468A and § 1.468A–1T through § 1.468A–8T are effective on July 18, 1984, with respect to taxable years ending on or after such date.

(2) *Cut-off method applicable to electing taxpayers.* Any amount of nuclear decommissioning costs taken into account before July 18, 1984, for a taxable year beginning before such date, is not allowable as a deduction after July 17, 1984, under section 468A (c)(2) and paragraph (e) of § 1.468A–2T.

(b) *Transitional rules.*—(1) *Time for filing request for schedule of ruling amounts.* If a taxpayer files a request for a schedule of ruling amounts under paragraph (h) of § 1.468A–3T on or before July 10, 1987 and the requirement of paragraph (g) of § 1.468A–3T is satisfied before the date the request is filed, the limitations contained in paragraph (h)(1)(v) of § 1.468A–3T shall not apply with respect to, and the Internal Revenue Service will provide a ruling amount for, any taxable year that ends on or after July 18, 1984, and begins before January 1, 1987.

(2) *Time for making payment to a nuclear decommissioning fund.* The amount of any cash payment to a nuclear decommissioning fund that relates to a taxable year that ends on or after July 18, 1984, and begins before January 1, 1987, shall be deemed made during such taxable year if—

(i) The taxpayer makes such payment on or before the 30th day after the date the taxpayer receives a ruling amount applicable to such taxable year; and

(ii) The taxpayer irrevocably designates the amount of such payment as relating to such taxable year on the Election Statement attached to its Federal income tax return (or amended return) for such taxable year.

(3) *Manner of and time for making election.* A taxpayer can elect the application of section 468A for a taxable year that ends on or after July 18, 1984, and begins before January 1, 1987, by attaching the Election Statement and a copy of the schedule of ruling amounts to an amended return for such taxable year that is filed on or before the 90th day after the date that the taxpayer receives a ruling amount for such taxable year.

(4) *Determination of cost of service limitation.* For purposes of section 468A (b)(1) and paragraph (b)(2) of § 1.468A–2T, the cost of service amount applicable to a nuclear decommissioning fund for the taxable year that includes July 18, 1984, is the amount determined under paragraph (b)(2) of § 1.468A–2T multiplied by a fraction, the numerator of which is the amount of nuclear decommissioning costs that is directly or indirectly charged to customers in such taxable year and that is included in the taxable income of the taxpayer for such taxable year and the denominator of which is the amount of nuclear decommissioning costs that is directly or indirectly charged to customers in such taxable year and that would have been includible in the gross income of the taxpayer if such amount was taken into account by the taxpayer in the same manner as amounts charged for electric energy (see § 1.88–1T). Under the preceding sentence, an amount of decommissioning costs is included in the taxable income of a taxpayer for the taxable year that includes July 18, 1984, if the amount is included in gross income for such taxable year and no deduction (other than a deduction allowed under section 468A (a) and paragraph (a) of § 1.468A–2T) is claimed with respect to such amount for such taxable year.

(5) *Determination of qualifying percentage.* (i) In the case of a nuclear power plant that began commercial operations before July 18, 1984, and whose estimated useful life for ratemaking purposes was adjusted by a public utility commission before July 18, 1984—

(A) If a taxpayer requests a schedule of ruling amounts for such nuclear power plant on or before July 10, 1987, the qualifying percentage equals the percentage of total depreciation costs (determined without regard to capitalized decommissioning costs) with respect to the nuclear power plant that remains to be recovered for ratemaking purposes as of the first day of the taxable year that includes July 18, 1984; or

(B) If a taxpayer does not request a schedule of ruling amounts for such nuclear power plant on or before July 10, 1986, the qualifying percentage equals the percentage of total depreciation costs (determined without regard to capitalized decommissioning costs) with respect to the nuclear power plant that remains to be recovered for ratemaking purposes as of the first day of the first taxable year for which a deductible payment is made to the nuclear decommissioning fund that relates to such nuclear power plant.

(ii) In the case of a nuclear power plant that began commercial operations on or before July 10, 1986 (other than a plant described in paragraph (b)(5)(i) of this section (*i.e.*, a plant that began such operations, and whose estimated useful life was adjusted, before July 18, 1984)), if a taxpayer requests a schedule of ruling amounts for such nuclear power plant on or before July 10, 1987, the estimated period for which the nuclear decommissioning fund to which the nuclear power plant relates is to be in effect for purposes of paragraph (d)(4)(ii) of § 1.468A–3T begins on the later of—

(A) The first day of the taxable year that includes the date that the nuclear power plant began commercial operations; or

(B) The first day of the taxable year that includes July 18, 1984.

(6) *Limitation on payments to a nuclear decommissioning fund*—(i) The limitation on payments to a nuclear decommissioning fund (see section 468A (b) and paragraph (b) of § 1.468A–2T) for a taxable year that ends on or after July 18, 1984, and begins before January 1, 1987, shall be determined under paragraph (b)(6)(ii) of this section if—

(A) The electing taxpayer receives a ruling amount applicable to such taxable year after the deemed payment deadline date for such taxable year; and

(B) The requirements of paragraph (b)(6)(iii) of this section are satisfied.

(ii) If the limitation on payments to a nuclear decommissioning fund for a taxable year is determined under this paragraph (b)(6)(ii), the maximum amount of cash payments made (or deemed made) to the nuclear decommissioning fund during such taxable year shall not exceed the sum of—

(A) The amount determined under section 468A (b) and paragraph (b) of § 1.468A–2T (*i.e.*, the lesser of the cost of service amount or the ruling amount) after application of the transitional rules contained in paragraph (b) (4) and (5) of this section; and

(B) The amount of after-tax earnings that would have accumulated to the date of actual payment to the nuclear decommissioning fund if the amount described in paragraph (b)(6)(ii) (A) of this section had been contributed to the nuclear decommissioning fund on the deemed payment deadline date for such taxable year.

In determining the after-tax earnings that would have accumulated to the date of payment, an electing taxpayer must use the after-tax rate of return of the nuclear decommissioning fund that was used in determining the schedule of ruling amounts.

(iii) In order to compute the payment limitation under paragraph (b)(6)(ii) of this section, an electing taxpayer must—

(A) Indicate on the Election Statement for the taxable year that the amount of the deductible payment is greater than the amount determined under section 468A (b) and paragraph (b) of § 1.468A–2T because paragraph (b) (6) of § 1.468A–8T applies; and

(B) Not claim any interest under section 6611 with respect to any overpayment of tax that is attributable to a deduction allowed with respect to such payment (see paragraph (b)(7) of this section).

(iv) The following example illustrates the application of the principles of paragraph (b)(6) of this section:

Example. X corporation is a calendar year, accrual method taxpayer engaged in the sale of electric energy generated by a nuclear power plant owned by X. On September 15,

1986. X receives a schedule of ruling amounts from the Internal Revenue Service that includes a ruling amount of $1,000,000 for the 1985 taxable year. For purposes of this example, assume that the cost of service amount applicable to the nuclear decommissioning fund for the 1985 taxable year is also $1,000,000 and that the after-tax rate of return of the nuclear decommissioning fund that was used in determining the schedule of ruling amounts is 10 percent compounded semi-annually. On September 15, 1986, X makes a contribution of $1,050,000 to a nuclear decommissioning fund established by X. Under paragraph (b)(6)(ii) of this section, this contribution does not exceed the limitation on payments for the 1985 taxable year and the entire amount of the contribution is deductible for such year. The additional $50,000 deductible payment that is allowed under this paragraph (b)(6) reflects the foregone earnings of the fund for the six-month period beginning on the deemed payment deadline date for the 1985 taxable year (March 15, 1986) and ending on the date of the contribution (September 15, 1986).

(7) *Denial of interest on overpayment.* If a deduction is allowed by reason of paragraph (b)(2) of this section for the amount of any payment made after the 15th day of the third calendar month after the close of the taxable year to which such payment relates, no interest shall be allowed or paid under section 6611 with respect to any overpayment attributable to such deduction for any period before the date the amended return claiming the deduction is filed.

PART 602—[AMENDED]

Par. 4. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101(c) is amended by inserting in the appropriate place in the table—

"§ 1.468A–3T * * * 1545–0954", "§ 1.468A–4T * * * 1545–0954", "§ 1.468A–6T * * * 1545–0954", "§ 1.468A–7T * * * 1545–0954", and "§ 1.468A–8T * * *1545–0954".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: June 30, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86–15616 Filed 7–9–86; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Order No. 1142–86]

Delegation of Authority—Payments

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends § 0.149 of Subpart X, Part 0 of Title 28, Code of Federal Regulations to delegate to the bureau heads, the Director of the Executive Office for United States Attorneys, and the Assistant Attorney General for Administration the authority to: (a) Approve waivers of the Department of the Treasury maximum limitation on routine payments of cash from imprest funds, and (b) approve requests to place imprest funds in depositary cash demand withdrawal accounts and establish the maximum amount of each account.

This order also amends §§ 0.148 and 0.149 Subpart X, Part 0 of Title 28, Code of Federal Regulations by adding the Director, Executive Office for United States Attorneys, to the delegations of authority for designating employees to certify vouchers and requesting Department of the Treasury designation of disbursing employees (including cashiers).

This is being done to provide the public with an accurate statement of the Department's structure.

EFFECTIVE DATE: June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Kamal J. Rahal, Director, Finance Staff, Office of the Comptroller, Justice Management Division, Department of Justice, Washington, DC 20530, (202–633–5538).

SUPPLEMENTARY INFORMATION: Department of the Treasury, Treasury Financial Manual, Part 4, Chapter 3000, delegates to agency heads the authority to approve routine payments of cash from imprest funds in excess of the general limitation imposed by the Department of the Treasury, and approve requests to place imprest funds in depositary cash demand withdrawal accounts and establish the maximum amount of each account. This order redelegates these authorities. Previously, such authorities were retained by the Department of the Treasury. The adding of the Director, Executive Office for United States Attorneys, to the delegations of authority for designating employees to certify vouchers and requesting Department of the Treasury designations of disbursing officers (including cashiers) eliminates the need for the Assistant Attorney General for Administation to include the redelegation of these authorities to the Director in future redelegations. Such authorities are now redelegated to the Director, Executive Office of the United States Attorneys, by the Assistant Attorney General for Administration in Order OBD 2110.12.

This regulation is exempt from the requirements of Executive Order No. 12291 as a regulation related to agency organization and management. Furthermore, this regulation will not have a significant economic impact on a substantial number of small entities because its effect is internal to the Department of Justice.

List of Subjects in 28 CFR Part 0

Government employees, Organization and functions (Government agencies), Authority delegations (Government agencies), and Intergovernmental relations.

By virtue of the authority vested in me as Attorney General by 28 U.S.C. 509, 510 and 530 and 5 U.S.C. 301, 28 CFR is hereby amended as follows:

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

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

2. Section 0.148 is revised to read as follows:

§ 0.148 Certifying officers.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of the Federal Prison Industries, Inc., the Commissioner of the Immigration and Naturalization Service, the Administrator of the Drug Enforcement Administration, Assistant Attorney General for the Office of Justice Programs, the Director of the United States Marshals Service, and the Director of the Executive Office for United States Attorneys, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department are authorized to designate employees to certify vouchers.

3. Section 0.149 is revised to read as follows:

§ 0.149 Cash payments.

The Director of the Federal Bureau of Investigation, the Director of the Bureau

of Prisons, the Commissioner of the Federal Prison Industries, Inc., the Commissioner of the Immigration and Naturalization Service, the Administrator of the Drug Enforcement Administration, the Assistant Attorney General for the Office of Justice Programs, the Director of the United States Marshals Service, and the Director of the Executive Office for United States Attorneys, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department, are authorized to:

(a) Request Department of the Treasury designation of disbursing employees (including cashiers),

(b) Approve waivers of the Department of the Treasury maximum limitation on routine payments of cash from imprest funds, and

(c) Approve requests to place imprest funds in depositary cash demand withdrawal accounts and establish the maximum amount of each account.

Guidelines are to be promulgated by each component for the establishment and maintenance of such accounts in accordance with the provisions set forth in the Treasury Financial Manual, Volume I, Part 4, Chapter 3000. Existing authorizations to request designations of disbursing employees shall remain in effect until terminated by the official who by this section would be authorized to request such designations.

Dated: June 30, 1986.

Edwin Meese III,

Attorney General.

[FR Doc. 86-15524 Filed 7-9-86; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is making several interpretative clarifications, revisions and additions to its paroling policy guidelines contained in 28 CFR 2.20. These changes and additions are intended to remove ambiguities and to make the guidelines more comprehensive. Further, the Parole Commission is amending the provisions at 28 CFR 2.37 to facilitate and expedite cooperation between the Commission and law enforcement officials.

EFFECTIVE DATE: August 11, 1986.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-4980.

SUPPLEMENTARY INFORMATION:

A. The Interim Rules and Their Purposes

In each of the following instances, the final rules being issued by the Parole Commission were preceded by the publication of an interim rule, with request for public comment.

1. On March 30, 1983, the U.S. Parole Commission published in the **Federal Register** (48 FR 13165) an interim rule, with request for public comment, that added a new subsection to its paroling policy guidelines, 28 CFR 2.20, to clarify its policy concerning the application of the guidelines to be used in probation revocation cases. Per section (j) (1) and (2), in probation revocation cases, the Commission considers the original federal offense and any new criminal conduct on probation (federal or otherwise) in assessing the offense severity except where probation has been revoked on a complex sentence (i.e., a committed sentence of more than six months followed by a probation term). In such complex sentences, the cases will be considered for guideline purposes under the Commission's reparole guidelines, 28 CFR 2.21.

2. On September 29, 1983, the U.S. Parole Commission published in the **Federal Register** (48 FR 44529) an interim rule, with request for comment, that made several interpretative clarifications, revisions and additions to the Offense Behavior Severity Index of 28 CFR 2.20. These amendments were, for the most part, editorial and served to clarify the offense examples and/or make the index more comprehensive by adding new offense examples. Among these amendments were the following: Offense Example 222 was revised for clarity as were Offense Examples 301(b), 331, 613, and 616; Offense Examples 901, 911, 921 and 931 of Chapter 9 were amended to clarify the consideration of an offender's role in illicit drug offenses; new Offense Example 321 was added to cover purse snatching, new Offense Example 335 to cover criminal copyright offenses and new Offense Example 617 to provide guidance on rating failure to appear in a misdemeanor proceeding; Offense Example 618 was added concerning contempt of court, as were Offense Example 1131 covering sexual exploitation of children, and Offense Example 1161 as regards money laundering; the definitions contained in Chapter 13 were revised and expanded; Offense Example 612 was revised to remove a potential inconsistency with another offense example; cross references were added to Offense Examples 614 and 615; and Offense Example 1101 was revised by adding a statutory reference that had been previously omitted due to clerical error.

3. On March 31, 1982, the U.S. Parole Commission published in the **Federal Register** (47 FR 13521) an interim rule with request for comment, that amended 28 CFR 2.37 (a) and (b), the rules governing the disclosure of information concerning parolees. Prior to these amendments, approval by a Commissioner was required to disclose information to persons who might be exposed to harm through contact with certain parolees. Such disclosure may not be made upon approval of the probation officer supervising the case. Formerly, approval by the Commission was required to provide lists of names of parolees entering a jurisdiction to local law enforcement agencies; such disclosure may now be provided by the appropriate Chief Probation Officer. Additionally, the rule was clarified to state explicitly that information about parolees may be disclosed to law enforcement agencies where necessary for public protection or for the enforcement of the conditions of parole.

B. Public Comment

The Washington Legal Foundation telephoned the Parole Commission to note its support of the interim rule containing the addition of 28 CFR 2.20(j). No public comment was received as regards the several changes and additions made to the Offense Behavior Severity Index per the interim rule published on September 29, 1983.

However, a significant number of responses were received concerning the disclosure of information concerning parolees pursuant to 28 CFR 2.37. Two sheriff's departments and one state policy chiefs association wrote in support of the rule; each noted that it would enhance investigative ability and aid in law enforcement. The Washington Legal Foundation provided a supportive letter, noting its opinion that the Parole Commission should further modify its rules to require the notification of victims when an offender has been released on parole. Some seventeen Chief Probation Officers provided comments, most expressing complete support with a few recommending some changes in wording that would clear up potential ambiguities. The Executive Director of the Federal Defenders of San Diego, Inc. wrote with suggestions as to needed clarifications and recommended that parolees themselves receive a specific notice when such disclosures

are made. Finally, the Executive Director of ACLU National Prison Project wrote to express opposition to the rule, noting privacy rights and the potential for harassment of parolees.

C. Changes From the Interim Rules

This set of final rules contains some changes from the interim rules; additionally, various items included therein were incorporated as part of previously published final rules:

1. 28 CFR 2.20(j)(1) was revised by a final rule published in the **Federal Register** by the U.S. Parole Commission on February 28, 1986 (51 FR 7065). Changes therein were made to conform it to amendments made previously to 28 CFR 2.21 concerning the recalculation of the salient factor score for parole violators;

2. 28 CFR 2.20(j)(2) is being revised to clarify the definition of a "complex sentence";

3. The title of Offense Example 613 of Chapter Six, Subchapter B of the Offense Behavior Severity Index of 28 CFR 2.20 and subsection (a) of that Offense Example was revised by a final rule published in the **Federal Register** by the U.S. Parole Commission on February 24, 1984 (49 FR 6892). Those changes were made to make the paroling policy guidelines internally more consistent with the severity rating for accessory after the fact;

4. Offense Example 615 of Chapter Six, Subchapter B of the Offense Behavior Severity Index of 28 CFR 2.20 was revised by a final rule published in the **Federal Register** by the U.S. Parole Commission on February 23, 1986 (51 FR 7065). That offense example was revised for clarity;

5. Offense Example 616 of Chapter Six, Subchapter B of the Offense Behavior Severity Index of 28 CFR 2.20 was revised by a final rule published in the **Federal Register** by the U.S. Parole Commission on February 24, 1984 (49 FR 6892). That offense example was revised for clarity;

6. The language of Offense Example 617(a) of Chapter Six, Subchapter B of the Offense Behavior Severity Index of 28 CFR 2.20 as published in the interim rule was corrected by the U.S. Parole Commission in a correction published in the **Federal Register** by the U.S. Parole Commission on October 18, 1983 (48 FR 48230);

7. Offense Example 618 of Chapter Six, Subchapter B of the Offense Behavior Severity Index of 28 CFR 2.20 was revised by final rule published in the **Federal Register** by the U.S. Parole Commission on February 28, 1986 (51 FR 7065). This offense example was revised for clarity;

8. Offense Example 901 of Chapter Nine, Subchapter A of the Offense Behavior Severity Index of 28 CFR 2.20 was revised by removing paragraph (h) and by removing the bracketed exception in paragraph (7) as part of a final rule published in the **Federal Register** by the U.S. Parole Commission on October 3, 1985 (50 FR 40365). The revision raises the offense severity level for this offense behavior;

9. Offense Example 921 of Chapter Nine, Subchapter C was revised by a final rule published in the **Federal Register** by the U.S. Parole Commission on August 29, 1984 (49 FR 34205). That revision was made to more adequately sanction large scale cocaine offenses;

10. The title of Offense Example 1161 of Chapter 11, Subchapter G of the Offense Behavior Severity Index of 28 CFR 2.20 was revised by a final rule published in the **Federal Register** by the U.S. Parole Commission on October 3, 1985 (50 FR 40365). That revision was made for clarity;

11. Definition 15 of Chapter Thirteen, Subchapter B, Definitions, of the Offense Behavior Severity Index of 28 CFR 2.20 was revised by a final rule published in the **Federal Register** by the U.S. Parole Commission on February 24, 1984 (49 FR 6892). That revision was made for clarity;

12. Definition 17 of Chapter Thirteen, Subchapter B, Definitions, of the Offense Behavior Severity Index of 28 CFR 2.20 was revised by a final rule published in the **Federal Register** by the U.S. Parole Commission on February 28, 1986 (51 FR 7065). That revision was made to conform to other revisions made to Offense Examples 211(e) and 212(a);

13. Definition 18 of Chapter Thirteen, Subchapter B, Definitions, of the Offense Behavior Severity Index of 28 CFR 2.20 was revised by a final rule published in the **Federal Register** by the U.S. Parole Commission on October 3, 1985 (50 FR 40365). That revision was made to conform the definition to an expanded legislative definition of the offense.

These rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.20, *Paroling Policy Guidelines; Statement of General Policy*, is amended by revising paragraph (j)(2) to read as follows:

§ 2.20 Paroling Policy Guidelines; Statement of General Policy.

* * * * *

(j)(2) Exception: Where probation has been revoked on a complex sentence [i.e., a committed sentence of more than six months on one count or more of an indictment or information followed by a probation term on other count(s) of an indictment or information], the case shall be considered for guideline purposes under § 2.21 as if parole rather than probation had been revoked.

3. Offense Example 222 of Chapter Two, Subchapter C of the Offense Behavior Severity Index of 28 CFR 2.20, as published as an interim rule on September 29, 1983 (48 FR 44529), is adopted as a final rule.

4. Offense Example 301(b) of Chapter Three, Subchapter A of the Offense Behavior Severity Index of 28 CFR 2.20, as published as an interim rule on September 29, 1983 (48 FR 44529), is adopted as a final rule.

5. Offense Example 321 of Chapter 3, Subchapter C of the Offense Behavior Severity Index of 28 CFR 2.20, as published as an interim rule on September 29, 1983 (48 FR 44529), is adopted as a final rule.

6. Offense Example 331(f)(2) of Chapter 3, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20, as published as an interim rule on September 29, 1983 (48 FR 44529), is adopted as a final rule.

7. Offense Example 335 of Chapter Three, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20, as published as an interim rule on September 29, 1983 (48 FR 44529), is adopted as a final rule.

8. Offense Example 612 of Chapter Six, Subchapter B of the Offense Behavior Severity Index of 28 CFR 2.20, as published as an interim rule on September 29, 1983 (48 FR 44529), is adopted as a final rule.

9. Offense Example 613 of Chapter Six, Subchapter B of the Offense Behavior Severity Index of 28 CFR 2.20, as published as an interim rule on September 29, 1983 (48 FR 44529), is adopted as a final rule.

10. Offense Example 614 of Chapter Six, Subchapter B of the Offense Behavior Severity Index of 28 CFR 2.20, as published as an interim rule on September 29, 1983 (48 FR 44529), is adopted as a final rule.

11. Offense Example 617 of Chapter Six, Subchapter B of the Offense

Behavior Severity Index of 28 CFR 2.20, as published as an interim rule on September 29, 1983 (48 FR 44529), is adopted as a final rule.

12. Offense Examples 901, 911 and 931 of Chapter Nine of the Offense Behavior Severity Index of 28 CFR 2.20, as published as an interim rules on September 29, 1983 (48 FR 44529), are adopted as final rules.

13. Offense Example 1101 of Chapter Eleven, Subchapter A of the Offense Behavior Severity Index of 28 CFR 2.20, as published as an interim rule on September 29, 1983 (48 FR 44529), is adopted as a final rule.

14. Offense Example 1131(b) of Chapter Eleven, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20, as published as an interim rule on September 29, 1983 (48 FR 44529), is adopted as a final rule.

15. Offense Example 1161 of Chapter Eleven, Subchapter G of the Offense Behavior Severity Index of 28 CFR 2.20, as published as an interim rule on September 29, 1983 (48 FR 44529), is adopted as a final rule.

16. Definitions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 19, 20; and 21 of Chapter Thirteen, Subchapter B, Definitions, of the Offshore Behavior Severity Index of 28 CFR 2.20, as published as interim rules on September 29, 1983 (48 FR 44529), are adopted as final rules.

17. 28 CFR 2.37, Disclosure of Information Concerning Parolees; Statement of Policy, as published as an interim rule on March 31, 1982 (47 FR 13521), is adopted as a final rule.

Dated: July 3, 1986.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 86-15064 Filed 7-9-86; 8:45 am]

BILLING CODE 4410-01-M

Office of the Attorney General

28 CFR Part 45

[Order No. 1141-86]

Conflict of Interests; Travel Expenses for an Accompanying Spouse

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends Part 45, section 735-14a, Title 28 of the Code of Federal Regulations, governing the acceptance of travel expenses for an accompanying spouse. This is being done in order to provide a regulation that reflects accurately the current law.

EFFECTIVE DATE: June 20, 1986.

FOR FURTHER INFORMATION CONTACT: Janis A. Sposato, General Counsel and Alternate Designated Agency Ethics Official, Justice Management Division, Department of Justice, Room 1226, 10th & Constitution Avenue NW., Washington, DC 20530 (202-633-3452).

SUPPLEMENTARY INFORMATION: This final rule will replace the Department's travel regulations. New subsection (c) of the amendment was added to clarify an ambiguity in the present regulation, and subsection (d) was drafted to address the policy concerns about travel reimbursement for spouses.

This regulation is exempt from the requirements of Exec. Order No. 12291 as a regulation related to agency organization and management. Furthermore, this regulation will not have a significant impact on a substantial number of small entities because its effect is internal to the Department of Justice.

List of Subjects in 28 CFR Part 45

Reimbursement for travel and subsistence, Acceptance of awards.

By virtue of the authority vested in me, as Attorney General, by 28 U.S.C. 301, Part 45 of Title 28, Code of Federal Regulations is hereby amended to read as follows.

1. The authority citation for Part 45 continues to read as follows:

Authority: 80 Stat. 379; 5 U.S.C. 301, Reorganization Plan No. 2 of 1950, 64 Stat. 1261; 3 CFR 1949-1953 Comp., E.O. 11222; 3 CFR, 1964-1965 Comp.; 3 CFR Part 735.

2. Section 45.735-14a is revised to read as follows:

§ 45.735-14a Reimbursement for travel and subsistence; acceptance of awards.

(a) Employees generally may not accept reimbursement for travel or expenses incident to travel on official business from any source other than the Federal Government. Employees may accept such reimbursement, however, from organizations that are exempt from taxation under the Internal Revenue Code, 26 U.S.C. 501(c)(3), for expenses incident to training or attendance at meetings in accordance with 5 U.S.C. 4111 and 5 CFR 410.702.

(b) Employees may accept reimbursement for travel or expenses incident to travel of a non-official nature so long as the circumstances are such that acceptance of the reimbursement is compatible with the other principles set forth in this part.

(c) Whether an employee's travel is of an official or non-official nature is a question that should be resolved by the employee's immediate supervisor. The supervisor should consider factors such as the relationship of the subject matter of the trip to the employee's official duties, the Department's interest in the employee's participation in the matter, and the employee's independent interest in the subject matter or relationship to the sponsors of the event.

(d) Employees may accept travel expenses for an accompanying spouse in connection with travel to attend meetings of an organization, or to accept an award from an organization, only if the DAEO (or Deputy DAEO) finds in advance that acceptance will not create an appearance of impropriety. In making this determination the DAEO (or Deputy DAEO) shall consider all relevant facts and circumstances. Factors such as those listed below would tend to support a favorable determination:

(1) The expenses will be paid by the sponsoring organization itself.

(2) The sponsoring organization is a nonprofit organization that is charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic in nature.

(3) The sponsoring organization does not have business with the Department that falls within the employee's official responsibility or that the employee could otherwise be expected to influence.

(4) The sponsoring organization would pay spousal expenses for similarly situated non-governmental employees.

(5) The amount paid by the organization is reasonable and covers only actual expenses for transportation, lodging, food, and other expenses reasonably incident to the travel.

(6) The spousal reimbursement was not solicited by the employee or the spouse.

(7) Acceptance is otherwise compatible with the principles set forth in this part.

(e) Employees may accept awards from charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organizations so long as the circumstances are such that acceptance is compatible with the other principles set forth in this part.

Dated: June 20, 1986.

Edwin Meese III,

Attorney General.

[FR Doc. 86-15413 Filed 7-9-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Ethylene Oxide

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

ACTION: Final rule; technical amendments and corrections.

SUMMARY: This document corrects administrative errors and incorporates clarifying language into OSHA's final rule on occupational exposure to ethylene oxide (EtO) that was published June 22, 1984 (49 FR 25734). This action is necessary to eliminate confusion with respect to the regulatory obligation imposed by the appendices to the EtO final rule. The information in EtO Appendices A, B, C, and D is not intended by itself to create any additional obligations not otherwise imposed by the standard. A statement that these appendices are non-mandatory in nature was included in paragraph 1910.1047(n) to the final EtO standard. To ensure that it is clearly understood that the EtO appendices impose no regulatory burden, however, a statement to that effect is added to the beginning of each appendix. Confusion over the appendices has also arisen by inadvertent use of the mandatory words "must" and "shall " in Appendix A. The word "should " is substituted for the words "shall " or "must " in the Appendices when specific obligation is not imposed by the standard. An incorrect reference in Appendix A to the existence of a short-term exposure limit for EtO is also deleted.

This document also corrects the amendatory language contained in the October 11, 1985 **Federal Register** notice on ethylene oxide dealing with labeling of EtO containers (50 FR 41491).

Language changes in that document intended to amend paragraph (j)(i)(ii) which covers labeling, instead of (j)(i)(i), which covers signs.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, OSHA–U.S. Department of Labor, Office of Public Affairs, Room N–3641, 200 Constitution Ave., NW. Washington, DC 20210. Telephone (202) 523–8151.

Signed at Washington, DC this 1st day of July.

John A. Pendergrass,

Assistant Secretary of Labor.

Accordingly, the Occupational Safety and Health Administration is amending 29 CFR 1910.1047 as follows:

1. The headings of appendices A, B, C, and D are corrected to read as follows:

§ 1910.1047 Ethylene oxide.

* * * *

Appendix A—Substance Safety Data Sheet for Ethylene Oxide (Non-Mandatory)

* * * * *

Appendix B—Substance Technical Guidelines for Ethylene Oxide (Non-Mandatory)

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Appendix C—Medical Surveillance Guidelines for Ethylene Oxide (Non-Mandatory)

* * * * *

Appendix D—Sampling and Analytical Methods for Ethylene Oxide (Non-Mandatory)

* * * * *

2. In addition, Appendices A and B are amended as follows:

A. In Appendix A, paragraph I.F. is revised to read

"F. Permissible Exposure: Exposure may not exceed 1 part EtO per million parts of air averaged over the 8-hour workday."

B. In Appendix B, paragraph III. B., the word "must" is revised to read "should".

C. In Appendix B, paragraph III. C., the word "shall" is revised to read "should".

D. In Appendix B, paragraph IV. A. 1., the word "must" is revised to read "should".

E. In Appendix B, of paragraph IV. A. 2, and paragraph IV. B, second full paragraph, the word "must" is revised to read "should" in each paragraph.

F. In Appendix B, paragraph V, first sentence, the word "shall" is revised to read "should".

G. In Appendix B, paragraph V, second paragraph, the word "must" is revised to read "should".

H. In Appendix B, paragraph VI. D., the word "shall" is revised to read "should".

3. The following corrections are made to FR Doc. 85–24844 on page 41491 in the issue of October 11, 1985:

1. On page 41491, middle column, in the paragraph "Summary", "(i)(1)(i)(A)" is corrected to read "(j)(1)(ii)(A)."

2. On page 41491, middle column, in the paragraph "Dates", "(j)(1)(i)(A)" is corrected to read "(j)(1)(ii)(A)."

3. On page 41493, third column, last paragraph, "(i)(1)(i)(A)" is corrected to read "(j)(1)(ii)(A)."

§ 1910.1047 [Corrected]

4. On page 41494, middle column, amendment paragraph 2., to § 1910.1047, "(j)(1)(i)(A)" is corrected to read "(j)(1)(ii)(A)"; and the designations in the text of § 1910.1047 are connected accordingly.

5. On page 41494, middle column, amendment paragraph 4., to § 1910.1047, in paragraph (m)(3)(i), "(j)(1)(i)(A)" is corrected to read "(j)(1)(ii)(A)".

[FR Doc. 86–15492 Filed 7–9–86; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7 86–12]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, SC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the South Carolina Department of Highways and Public Transportation the Coast Guard is changing the regulations governing the Ben Sawyer Bridge, mile 462.2 at Sullivan's Island, by permitting the number of openings to be limited during certain periods. This change is being made because of reports of vehicular congestions. This action will accommodate the needs of vehicular traffic yet still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on July 19, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Lee, (305) 536–4103.

SUPPLEMENTARY INFORMATION: On May 5, 1986, the Coast Guard published (51 FR 16568) a proposal to revise these regulations. The proposed regulations were also published in a public notice issued by the Commander, Seventh Coast Guard District, on May 19, 1986. In each case, interested persons were given until June 19, 1986, to submit comments. This final rule is being made effective in less than 30 days after **Federal Register** publication because following normal rulemaking procedures would be impractical. The existing temporary rule governing this bridge expires on July 20, 1986. To avoid unnecessary traffic disruption caused by expiration of the temporary rule, we are making the final rule effective on July 19.

Drafting Information

The drafters of these regulations are Mr. Wayne Lee, Chief, Bridge Section, Aids to Navigation Branch, project officer, and Commander Ken Gray, project attorney.

Discussion of Comments

Twelve letters and one telegram were received in response to the proposal. Ten respondents supported it, citing the severe traffic congestion and the difficulty of vehicular access, especially for emergency vehicles. Three commenters opposed the change. Two felt that waterway users should not be required to wait for up to one hour for a bridge opening. Another commenter cited the difficulty of waiting for an opening in an area of swift currents. The approach to the bridge from the northeast is long and straight, while Charleston Harbor is close by to the southwest. An on-site inspection did not reveal any unusual current conditions. Vessels should be able to time their approach to the area and avoid lengthy delays near the Ben Sawyer bridge.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.911 is amended by revising paragraph (c) to read as follows:

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

* * * * *

(c) *Ben Sawyer (SR 703) bridge across Sullivan's Island Narrows, mile 462.2 between Sullivan's Island and Mount Pleasant.* The draw shall open on signal; except that, the draw need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except federal holidays. On saturdays, Sundays, and federal holidays from 9 a.m. to 7 p.m. the draw need open only on the hour.

* * * * *

Dated: June 27, 1986.

G.S. Duca,

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

[FR Doc. 86–15564 Filed 7–9–86; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Parts 140 and 142

[CGD 79–077]

Workplace Safety and Health Requirements for Facilities on the Outer Continental Shelf

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is issuing regulations concerning personal protective equipment and general working conditions on Outer Continental Shelf (OCS) facilities. These regulations address the need identified in the OCS Lands Act Amendments of 1978 to promote safe working conditions by regulating hazards in the workplace. This rule is part of a continuing effort by the Coast Guard to improve safety of life and property on the OCS.

EFFECTIVE DATE: This rule is effective on January 12, 1987. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 12, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Allen W. Penn, Office of Merchant Marine Safety, (202) 426–2307.

SUPPLEMENTARY INFORMATION: On September 20, 1979, the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) on unregulated hazardous working conditions on the Outer Continental Shelf (OCS) (44 FR 54499). Drawing upon the information generated by this ANPRM, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) focusing on personal protective equipment and general working conditions on facilities and mobile offshore drilling units (MODUs) engaged in OCS activities (49 FR 1083; January 9, 1984). On February 28, 1984, a document was published to correct the regulatory evaluation and paperwork reduction sections of the NPRM and to extend its comment period (49 FR 7253). The present document is a final rule based on this NPRM.

Thirty-two written comments were received in response to the NPRM and are discussed in this document. Comments were received from private individuals, public officials, commercial enterprises, and industry associations. None of the comments requested a public hearing. The Coast Guard agreed that a public hearing was not necessary to provide additional beneficial information; therefore, no public hearing was scheduled.

Drafting Information

The principal persons involved in drafting this rule are Mr. Allen W. Penn, G–MVI–4, Office of Merchant Marine Safety, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Background

The regulations contained in this rulemaking apply to Outer Continental Shelf (OCS) facilities as defined in 33 CFR 140.10. "OCS facility" means:

> any artificial island, installation, or other device permanently or temporarily attached to the subsoil or seabed of the Outer Continental Shelf, erected for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources. The term includes mobile offshore drilling units when in contact with the seabed of the OCS for exploration or exploitation of subsea resources. The term does not include any pipeline or deepwater port (as the term "deepwater port" is defined in section 3(10) of the Deepwater Ports Act of 1974 (33 U.S.C. 1502)).

All mobile offshore drilling units (MODUs), including U.S. and foreign documented or undocumented units, are covered by this definition.

Under the authority of 43 U.S.C. 1333 and 1348 and in accordance with the Memorandum of Understanding (MOU) between the Coast Guard and the Occupational Safety and Health Administration of December 18, 1980 (45 FR 9142), these regulations supersede a portion of OSHA's General Industry Standards as they may apply to OCS activities, in particular 29 CFR Part 1910, Subpart 1, Personal Protective Equipment. This rulemaking has been coordinated with OSHA in accordance with the above mentioned MOU. In addition, under section 21(f) of the OCS Lands Act, this rule has been coordinated with the Department of the Interior to avoid inconsistent or duplicative requirements.

The Coast Guard is continuing to evaluate the need and the desirability of promulgating other regulations applicable to the workplace on the OCS. The next phase of Coast Guard

rulemaking in the area of OCS workplace safety and health will be accomplished under Coast Guard docket number CGD 84–098. An advance notice of proposed rulemaking, "Revision of the Regulations on Outer Continental Shelf Activities", was published in the Federal Register on March 7, 1985 (50 FR 9290).

This final rule is being made effective six months after publication in order to give operators and offshore personnel sufficient time to purchase and install required equipment, if it is not already in use on their units.

Discussion of Major Comments

General Comments

1. Three comments suggest the need for grandfathering due to the expense and remaining usefulness of personal protective equipment already in use on many facilities engaged in OCS activities. In light of the fact that equipment conforming to these regulations is already in wide use offshore, that a six month period is provided before these requirements become effective, and that the cost of the equipment is not sufficiently burdensome, it is not clear that grandfathering is justifiable under the circumstances. The ANSI standards incorporated by these regulations provide for the continued use of equipment tested and marked under earlier ANSI editions. Therefore, grandfathering provisions have not been included.

2. Several respondents object to the necessity for this rulemaking, because they felt their companies met the standards specified in these requirements. If these respondents meet the standards in these rules, the rules will have no impact on them. Unfortunately, not every offshore oil and gas operation meets these standards. Despite the efforts made by responsible companies, the offshore oil and gas industry still maintains a high incidence of injury as compared to the rest of heavy industry in the United States. A search of Coast Guard accident records from January 1981 to September 1984 for MODUs and platforms yielded the following: 59 eye injuries, 157 foot injuries, and 104 head injuries (resulting in 13 deaths). Therefore, as mandated by Section 21(c) of the OCS Lands Act, Coast Guard regulation is needed to address these unregulated hazardous working conditions on the OCS.

3. Two respondents felt the term "ensure" throughout this rulemaking was too restrictive on the operator and leaseholder and the use of "assure" would best suit the purpose in the regulations. Under standard dictionary definitions and customary usage, these terms are often used interchangeably. To avoid confusion, "ensure" is retained to provide consistency with other Coast Guard regulations.

4. One comment states that the leaseholder should not be held responsible for MODUs that are "stacked" or idle in the leased area. As these regulations apply only to "OCS facilities", MODU's must be "in contact with the seabed of the OCS for exploration or exploitation of subsea resources" to qualify as an "OCS facility" (see definition under the Background section in this preamble). Idle MODU's in storage would not qualify under this definition as an "OCS facility".

Specific Comments

1. Section 140.7—(a) Because the ANSI standards are subject to periodic revision, one respondent was concerned that the standards appeared to be incorporated without reference to a specific publication date. The dates of the editions incorporated are listed in the "Incorporated by Reference" section of this preamble and will be included in the "Material Approved for Incorporation by Reference" table at the end of Title 33 of the Code of Federal Regulations.

(b) One comment states that the requirements of the Administrative Procedures Act were not met by incorporating the ANSI standards because the public was not given an opportunity to comment on these standards. The notice of proposed rulemaking provides the public with an opportunity to comment on whether the Coast Guard should incorporate these standards. Incorporation in the regulations of future changes by ANSI would require separate notice and opportunity for comment.

(c) One comment suggests the incorporation of two additional ANSI standards, Z308.1–1978, "Minimum Requirements for Industrial Unit—Type First Aid Kits" and Z358.1–1981, "Emergency Eyewash and Shower Equipment". These standards were not initially considered for incorporation when the notice of proposed rulemaking was published. Including them at this time would not afford the public an opportunity to comment on their inclusion, in accordance with the Administrative Procedures Act. However, they will be considered in future rulemakings concerning workplace safety and health standards under this subchapter.

(d) Another respondent prefers the use of his equipment instead of the equipment specified by ANSI A10.14. Though the equipment mentioned may have merit, the Coast Guard does not have the resources to review, test, and approve nonstandard equipment. One major reason for adopting ANSI standards is to alleviate the burden of separately approving equipment of a type already carefully considered by industrial standards organizations in preparing their standards.

2. Section 140.10—Two comments suggest that the definition of "personnel" be changed to include visitors and government officials with respect to the use of protective footwear. These regulations concern the safety of the worker while in the workplace. Visitors to the workplace can be controlled by the supervisor, though they are usually excluded altogether from entry into the workplace. Government officials on board the unit to perform their official functions are routinely equipped with personal protective gear and are familiar with the hazards of the workplace. To clarify what persons constitute "personnel" under these regulations, the examples stated in the preamble to the Notice of Proposed Rulemaking under § 140.10 have been incorporated in the text of this rulemaking. "Personnel" are employees of the lease/permit holder, the operator (if other than the lease/permit holder), the contractor, the unit owner (if other than any of the above), and the subcontractors.

3. Sections 142.4 and 142.7—A number of comments recommend substantive changes to these sections, which are old §§ 142.1 and 142.5 renumbered without further change. The substance of these sections is not a part of this rulemaking. As stated in the preamble to the NPRM, they were included only because they had to be renumbered to allow for the insertion of new § 142.1, Purpose. The comments, however, will be retained by the Coast Guard for consideration in future rulemakings.

4. Section 142.21—Two comments suggest that Mobile Offshore Drilling Units (MODUs) be exempted from the requirements of this section, because they felt existing regulations for MODUs in Title 46 of the Code of Federal Regulations already covered the same subjects as this rulemaking. Presently, there are no corresponding provisions in Title 46; however, the Coast Guard is considering similar requirements in a future rulemaking under Title 46 to cover MODUs not in use on the OCS.

5. Section 142.24—(a) Several comments discuss the financial burden placed upon the leaseholders and

operators by requiring them to provide certain personal protective equipment that has traditionally been provided by the employee. Paragraphs (a) and (b) have been reworded so as not to require leaseholders and operators to furnish the equipment under this subpart.

(b) Section 142.24 assigns responsibility for ensuring that personnel properly wear or use the equipment to the lease/permit holder and to persons in charge of actual operations. Several comments object to imposing such responsibility on the lease/permit holder for two main reasons. First, the persons in charge of actual operations are in a better position to control the workplace. Second, third party claims against the lease/permit holder would be improper and unenforceable because of the confusion that would result if the lease/permit holder was in fact several companies with differing percentages of ownership.

The decision to assign responsibility to the lease/permit holder was not a Coast Guard decision but is a mandate under section 22 of the OCS Lands Act. This statutory provision is addressed in old § 142.1, now § 142.4 under this rulemaking. Under this rulemaking, the wearing or use of required personal protective equipment is a responsibility shared by the lease/permit holder and persons responsible for actual operations, as well as the individual worker.

6. Section 142.27—(a) One comment suggests the need for flexibility in selecting the required eye and face protection. As Figure 8 of ANSI Z87.1 (incorporated in this section) already provides this flexibility, no change was deemed necessary.

(b) The words "or observing" were added to align the provision with ANSI Z87.1.

7. Section 142.33—(a) Several comments suggest that the use of protective footwear be limited to areas where foot injuries might occur. Unfortunately, these injuries are not location specific. Therefore, the broad scope of the provision was left unchanged.

(b) Several comments suggest that specific personnel, such as visitors and government officials, be exempt from the requirements of this section. See the response to comments under § 140.10 in this preamble.

(c) One comment suggests that this requirement could be more of a hazard in the Arctic, because there is no protective footwear meeting ANSI standard Z41 that would also protect feet from the severe cold. A specific exemption to the wearing of protective footwear meeting ANSI Z41 has been added to address instances where harsh environmental conditions present a greater hazard than those against which safety-toed footwear is designed to protect.

(d) One comment remarks that the ANSI standard itself already specifies the use of the ANSI label. If protective footwear is required to meet ANSI, why is there a need to also state that it be labeled under ANSI? Strictly speaking this respondent is correct; but, from a practical standpoint, the main thing personnel need to know is that a label is required by the standard. This helps to avoid the purchase and use of improper footwear. The Coast Guard believes this additional information is justified under the circumstances and has retained the labeling provision appearing in the NPRM.

8. Section 142.36—(a) Two comments state that this requirement is too stringent and that only personnel whose jobs required them to work in areas where these hazards exist should wear protective clothing. The hazard is present to all personnel in the area, whether they are actually working or not. Therefore, all personnel in the area are required to wear protective clothing.

(b) One comment suggests that areas which have even a potential for exposure to hazardous materials should be included in this requirement. The intent of the provision is to protect against an actual hazard. The use of "potential hazard" could broaden the area of hazard to include virtually the entire OCS facility. Such an extension would be an economic burden and of questionable benefit.

(c) One comment questions whether the use of PVC coated protective clothing, as mentioned in the preamble of the notice of proposed rulemaking, was specifically required. As stated in the preamble, this was only an example. The specific type of protective clothing used is performance oriented and left to the judgment of the holder of the lease or permit and/or the persons responsible for actual operations.

9. Section 142.39—(a) Two comments suggest that the word "known" be inserted before the phrase "short and long term harmful effects" of paragraph (b)(3), in order to specifically limit the information required to the data shown on the label of the substance to which the atmosphere has been exposed. The Coast Guard believes that any effort to limit information to that on a label would be too restrictive in scope, because other harmful effects due to exposure to these hazardous materials may be published in material safety data sheets, safety notices, or similar dispatches that may update information listed on the manufacturer's label. Sources of information on "generally recognized" hazards of products introduced to the atmosphere are readily accessible from the manufacturers of these products by one of the aforementioned means.

The main purpose of the provision is to impress upon the worker the actual hazard involved in hopes that this knowledge will encourage the worker to use proper equipment and observe proper procedures. In view of this, the Coast Guard has decided that an appropriate alternative to "known" would be "generally recognized" and the wording in this part has been changed to reflect this.

(b) One comment received felt it was an oversight in referencing § 142.4 in lieu of § 142.4(b) for assigning responsibility for the use of respiratory protection. The Coast Guard fully intended that everyone assigned responsibility under § 142.4 be held accountable, including the lease/permit holder. The duties of these persons relative to the maintenance of the workplace, the conduct of operations, and the use of personal protective equipment extends to workplace procedures and personnel training, as fundamental elements of workplace safety. The provision is, therefore, unchanged.

(c) One comment requests that the word "approved" be deleted from paragraph (c) of this section, because ANSI does not have standards for the approval of respiratory protection equipment. ANSI Z88.2–1980 does not have standards of approval for respiratory equipment; it does, however, provide for National Institute for Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration (MSHA) acceptance as the approval criteria in section 6.1 and Appendix A3 of the standard. Therefore, the provision is not changed.

10. Section 142.42—(a) Several comments suggest that the need for safety belts, harnesses, and lifelines appears to be unnecessary in cases where personnel are only transiting areas or during the use of personnel transfer devices. As long as the activity entails moving from one location to another, there is no need for personnel to be outfitted with safety belt and harnesses. Therefore, a change has been made to provide for this exception.

(b) One comment questions whether it is the Coast Guard's intent to require personnel to wear safety belts and lifelines while in a caged ladder or on a guarded scaffold. A safety belt and

lifeline would still be required because the cage on a ladder does not prevent a vertical fall and guard rails on scaffolds are frequently not designed to provide adequate restraint for a falling body or to prevent a person from falling under the rail. Therefore, no change has been made.

(c) One comment suggests that the use of a lanyard on safety belts or harnesses may impede the employee's ability to release himself in the event of an emergency. Though some equipment specified by ANSI would impede rapid release, other devices referred to in the standard are designed for quick release. This standard provides a choice depending on the particular operation. No change to the regulation is necessary.

(d) One comment suggests the use of nets as an alternative to safety belts and harnesses. Nets may be used, but not instead of safety belts and harnesses. Presently, there are no Coast Guard standards for nets used for this purpose. Nets are used to catch a variety of falling objects; but lanyards and safety belts are used only by people and are discarded once used to stop a fall. Though it is questionable whether standards for nets could be devised to make nets a reliable substitute for lanyards and safety belts, the Coast Guard will consider the use of nets in a future rulemaking.

(e) Another comment suggests the use of a retracting lifeline along with the approved devices in ANSI A10.14. This device was not evaluated for inclusion in this regulation. However, it will be considered in a future rulemaking addressing this section.

11. Section 142.45—(a) One comment states that wearing a personal flotation device while working over or near water may impair the employee, and possibly endanger him, while working. The Coast Guard does not believe this to be the case. There are numerous styles and sizes of Coast Guard approved work vests and life preservers that provide adequate protection from drowning and cause minimal hindrance while working.

(b) One comment suggests that the use of a personal flotation device was unnecessary when the wearing of a safety belt or harness was required. The proper use of a safety belt or harness with lanyard is an acceptable alternative to wearing a personal flotation device required by this section. This section has been changed to permit this option.

(c) One comment questions what constitutes a location where a person may likely fall into the water. The question is not where such a location is but whether a falling person at that location would likely fall into water. For example, if a person falls on deck that is properly guarded, that person could, though it is unlikely, roll through the rails and fall into water. At such a location, a personal flotation device would not be required. As a result, no change is needed.

(d) One comment suggests the inclusion of exposure suits with the approved work vests and life preservers for use in harsher environments. The performance of any routine work while wearing an exposure suit is untenable because these suits were not designed for that use. However, there are approved work vests designed as coveralls that could provide some protection from cold water hazards. The best solution is to use a safety belt or harness with the appropriate clothing.

12. Section 142.48—One comment concerns the possibility of contamination of eyewash equipment by requiring it to be located on the drill floor and in the mudroom. This section has been changed to allow eyewash equipment to be placed near, rather than in or on, the location where the hazard exists.

13. Section 142.81—Two comments state that Subpart C conflicts with existing provisions for MODU's under Title 46 in the Code of Federal Regulations. Sections 142.84 and 142.87 are the only sections that are similar to requirements in the MODU regulations in Title 46 (§§ 109.575 and 108.217). Sections 142.84 and 142.87 are more general than Title 46 in addressing which surfaces must be kept free, what substances may create a slipping hazard, and how deck openings must be guarded. No conflict will result.

14. Section 142.84—(a) Three comments suggest that the requirement for surfaces to be kept free of slipping hazards be made more flexible to accommodate the pulling of wet strings of drill pipe. Because the spillage of drilling fluid is inevitable in such an operation, this section has been changed to make it more performance oriented during certain operations on the drill floor. When engaged in an activity in which the spillage of substances creating a slipping hazard is inevitable, footwear or flooring designed to substantially reduce slipping can be used as an alternative to keeping the floor clear, however the work area must be kept as clean as practicable and the spillage cleaned up when the activity is completed or suspended.

(b) Three comments suggest that the term "reasonably" be inserted before "clear of tools" and "free of substances." The Coast Guard feels the burden imposed by the section as drafted is justifiable. Working surfaces and walkways simply should be kept clear of equipment when not in use and free of slipping hazards. Therefore, no change is made.

15. Section 142.87—(a) One comment suggests that this requirement was too stringent in that it failed to allow personnel to work over or through unguarded openings. The intent of this requirement was to allow the use of these openings when necessary and to guard or cover them when not in use. Therefore, a change has been made to clarify this.

(b) Another comment suggests that some openings were not accessible because of their location and should not be required to have guards or covers. This section has been changed because there is no need for guards or covers if access to openings are already effectively blocked due to their location.

16. Section 142.90—(a) Three comments suggest that an exception should be made when equipment power requirements are so low as not to pose a hazard. This would allow any of the company's designated electricians, technicians, mechanics, or their supervisors to determine whether equipment power sources present a potential hazard to others, whether they are qualified or not to make such a determination. The potential hazard of any electrical shock to an unsuspecting person far outweighs the minimal inconvenience imposed by this provision. No change has been made.

(b) Five commentors remarked on the inability of relief workers to reactivate equipment, because only personnel actually deactivating the equipment subject to this section or their supervisor are allowed to reactivate the equipment. The Coast Guard recognizes this problem and has revised paragraph (c) (new paragraph (d)) of this section to allow respective reliefs to reactivate the equipment.

(c) One comment suggests that the Coast Guard incorporate ANSI Z244.1, Lockout/Tagout of Energy Sources, instead of applying this section when deactivating power sources. Though the ANSI standard is much more comprehensive than the provisions of this rulemaking, the Coast Guard believes the requirements in this rule are adequate. However, the Coast Guard will consider it for incorporation in a future rulemaking addressing this section, when additional comments may be obtained.

One point noticed in reviewing ANSI Z244.1 is that the Coast Guard's provision is unclear as to where the tags under new paragraph (c) should be

placed. We have revised the paragraph to be more explicit as to the placement of these tags.

(d) Two comments suggest that "tag" and "tags" be used instead of "sign" and "signs", so that the terminology is consistent with the title of this section. The terms "tag" and "tags" have been substituted throughout § 142.90.

(e) Three comments suggest changing this section to indicate the priority to be attached to the locking out requirement over those requiring just the disconnection and tagging out of power sources. A new paragraph (b) has been added to reflect the importance attached to locking out power sources instead of just disconnecting and tagging out of these sources. Proposed paragraph (d) has been included in new paragraph (a).

(f) One comment suggests that the tagout requirement should be clarified so that it is understood not to be required when lockout procedures are used. Tagout requirements apply whenever it is necessary to disable the power source to any equipment, whether or not the lockout provision exists. Therefore, no change is made.

(g) One comment requests that the Coast Guard wait until OSHA issues its Lockout/Tagout regulations to avoid conflict and confusion. OSHA already has general industry standards in Title 29 CFR 1910.145(f) which give examples of wording and placement of tags. The Coast Guard's regulation is more specific as to where these tags are to be placed and when they are to be used.

Incorporation by Reference

The following material has been approved for incorporation by reference by the Director of the Federal Register under 5 U.S.C. 522 and 1 CFR Part 51:

ANSI 10.14–1975—Requirements for Safety Belts, Harnesses, Lanyards, Lifelines, and Drop Lines for Construction and Industrial Use.

ANSI Z41–1983—American National Standard for Personal Protection-Protective Footwear.

ANSI Z87.1–1979—Practice for Occupational and Educational Eye and Face Protection.

ANSI Z88.2–1980—Practices for Respiratory Protection.

ANSI Z89.1–1981—Safety Requirements for Industrial Head Protection.

The material incorporated by reference is on file at the Library of the Office of the Federal Register, Room 8301, 1100 T Street, NW., Washington, DC 20408 and is available for inspection or copying at Coast Guard Headquarters, Room 2210, 2100 Second Street, SW., Washington, DC 20593. Copies of the material may be purchased from the American National Standards Institute, Sales Department, 1430 Broadway, New York, NY 10018.

If substantive changes are made by ANSI to the material incorporated, those changes may be considered for incorporation. However, before taking final action, the Coast Guard will publish a separate notice in the Federal Register for public comment.

E.O. 12291 and DOT Regulatory Policies and Procedures

This final rule is considered to be non-major under Executive Order 12291 and is significant under DOT policies and procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Office of the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, (202) 426–1477, from 7:30 a.m. to 4:00 p.m.

As discussed in the evaluation, these rules will not impose substantial costs on industry. The costs imposed will be more than offset by the estimated annual saving of lives and the cost of injuries. Additionally, the reduction in frequency and severity of injuries should produce a corresponding reduction in the amounts paid in insurance premiums and worker compensation.

One comment states that the OCS fatality rates in the draft regulatory evaluation were substantially higher than those published by the Minerals Management Service for the same period ("Safety Information and Management on the OCS", National Research Council, 1984). The Coast Guard, however, obtains more complete information on fatalities because of its statutory mandate to investigate each death or serious injury occurring as a result of OCS operations. This factor is noted in a footnote of page 16 of the NRC report.

An additional point brought up by the respondent was that his cost estimates for acquiring the required personal protective equipment were fifty per cent higher than the Coast Guard's estimates. The higher estimates result from the fact that certain items listed by the respondent exceeded Coast Guard minimums and were substantially more expensive (approximately $7,000 more per unit for initial cost).

The total initial cost for the required personal protective equipment, eyewash equipment, and respiratory protection training for a mobile drilling unit with a 50 person crew was estimated to be $10,000 and the cost for a manned fixed facility with a 25 person crew was $5,000 when the NPRM was published. Based on 200 mobile drilling units and 600 manned fixed facilities operating on the OCS, the maximum initial industry cost would have been $5,600,000 with a maximum annual cost of $1,120,000. These costs were based on the actual 1983 prices of a major safety equipment supply firm; their 1984 catalog shows no substantial price increases. The only notable increase in updating these costs is the increase in the number of manned facilities. The Coast Guard estimates that there now are approximately 230 mobile offshore drilling units and 660 manned fixed facilities that are subject to these regulations. This would bring the maximum initial industry cost to $6,250,000 with a maximum annual cost of $1,250,000. In actuality, these costs would most likely be substantially less because of the high level of usage of safety equipment, meeting or exceeding these requirements, which already exists on the OCS.

Regulatory Flexibility Act

The economic impact of the regulations will fall on the owners, operators, and subcontractors furnishing the personal protective equipment required by this rule. Oil company operators and owners of OCS units are generally major corporations or subsidiaries of major corporations. The degree of impact on the numerous subcontractors providing specialized services offshore will be roughly proportional to the number of employees. Therefore, the small entities will incur proportionally less cost.

Personal protective equipment manufacturers will be affected because only equipment meeting ANSI standards is acceptable offshore. This may require certain manufacturers to redesign their equipment in order to only equipment meeting ANSI standards is acceptable offshore. This may require certain manufacturers to redesign their equipment in order to remain competitive in the offshore market. However, the effect on manufacturers will not be substantial because most of the personal protective equipment being purchased for offshore use already meets ANSI standards.

Comments were specifically requested in the notice of proposed rulemaking from small entities which might be significantly affected by the rules. No comments were received on this subject.

For the above reasons, the Coast Guard certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains no information collection or recordkeeping requirements.

The existing provisions allowing for approval of equipment providing equivalent levels of safety in 33 CFR 140.15 has been approved under OMB control number 2115-0555.

Environmental Assessment

The Coast Guard has considered the environmental impact of the regulations and concluded that the preparation of an environmental impact statement is not necessary. An environmental assessment with a finding of no significant impact has been prepared and is on file in the rulemaking docket.

List of Subjects

33 CFR Part 140

Administrative practice and procedure, Authority delegation, Continental Shelf, Incorporation by reference, Law Enforcement, Marine safety.

33 CFR Part 142

Continental Shelf, Incorporation by reference, Marine safety.

Parts 140 and 142 of Subchapter N, Chapter I, Title 33 of the Code of Federal Regulations are amended as follows:

PART 140—GENERAL

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

Authority: 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46(z).

2. Section 140.7 is revised to read as follows:

§ 140.7 Incorporation by reference.

(a) Certain materials are incorporated by reference into this subchapter with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference", which appears in the Finding Aids section of this volume. In that table is found citations to the particular sections of this subchapter where the material is incorporated and the date of the approval by the Director of the Federal Register. To enforce any edition other than the ones listed in paragarph (b) of this section, notice of the change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register, Washington, DC 20408 and is available for inspection or copying at U.S. Coast Guard Headquarters, Room 2110, Transpoint Building, 2100 Second Street, SW., Washington, DC 20593, (202) 426-1477.

(b) The materials approved for incorporation by reference in this subchapter are: American National Standards Institute (ANSI), 1430 Broadway, New York, NY 10018.

ANSI 10.14-1975—Requirements for Safety Belts, Harnesses, Lanyards, Lifelines, and Drop Lines for Construction and Industrial Use.

ANSI Z41-1983—American National Standard for Personal Protection—Protective Footwear.

ANSI Z87.1-1979—Practice for Occupational and Educational Eye and Face Protection.

ANSI Z88.2-1980—Practices for Respiratory Protection.

ANSI Z89.1-1981—Safety Requirements for Industrial Head Protection.

International Maritime Organization (IMO).

IMO Sales, New York Nautical Instrument and Service Corp., 140 W. Broadway, New York, NY 10013.

IMO Assembly Resolution A.414 (XI)—Code for Construction and Equipment of Mobile Offshore Drilling Units.

3. In § 140.10, a new term is added as follows:

§ 140.10 Definitions.

As used in this subchapter:

* * * * *

"Personnel" means individuals who are employed by leaseholders, permit holders, operators, owners, contractors, or subcontractors and who are on a unit by reason of their employment.

* * * * * *

4. By revising Part 142 to read as follows:

PART 142—WORKPLACE SAFETY AND HEALTH

Subpart A—General

Sec.

142.1 Purpose.
142.4 Duties of lessees, permittees, and persons responsible for actual operations.
142.7 Reports of unsafe working conditions.

Subpart B—Personal Protective Equipment

142.21 Purpose and applicability.
142.24 Use of equipment.
142.27 Eye and face protection.
142.30 Head protection.
142.33 Foot protection.
142.36 Protective clothing.
142.39 Respiratory protection.
142.42 Safety belts and lifelines.
142.45 Personal flotation devices.
142.48 Eyewash equipment.

Subpart C—General Workplace Conditions

142.81 Purpose and applicability.
142.84 Housekeeping.
142.87 Guarding of deck openings.
142.90 Lockout and tagout.

Authority: 43 U.S.C 1333(d)(1), 1347(c), 1348(c); 49 CFR 1.46(z).

Subpart A—General

§ 142.1 Purpose.

This part is intended to promote workplace safety and health by establishing requirements relating to personnel, workplace activities and conditions, and equipment on the Outer Continental Shelf (OCS).

§ 142.4 Duties of lessees, permittees, and persons responsible for actual operations.

(a) Each holder of a lease or permit under the Act shall ensure that all places of employment within the lease area or within the area covered by the permit on the OCS are maintained in compliance with workplace safety and health regulations of this part and, in addition, free from recognized hazards.

(b) Persons responsible for actual operations, including owners, operators, contractors, and subcontractors, shall ensure that those operations subject to their control are conducted in compliance with workplace safety and health regulations of this part and, in addition, free from recognized hazards.

(c) "Recognized hazards", in paragraph (a) and (b) of this section, means conditions which are—

(1) Generally known among persons in the affected industry as causing or likely to cause death or serious physical harm to persons exposed to those conditions; and

(2) Routinely controlled in the affected industry.

§ 142.7 Reports of unsafe working conditions.

(a) Any person may report a possible violation of any regulation in this subchapter or any other hazardous or unsafe working condition on any unit engaged in OCS activities to an Officer in Charge, Marine Inspection.

(b) After reviewing the report and conducting any necessary investigation, the Officer in Charge, Marine Inspection, notifies the owner or operator of any deficiency or hazard and initiates enforcement measures as the circumstances warrant.

(c) The identity of any person making a report under paragraph (a) of this section is not made available, without the permission of the reporting person, to anyone other than those officers and

employees of the Department of Transportation who have a need for the record in the performance of their official duties.

Subpart B—Personal Protective Equipment

§ 142.21 Purpose and applicability.

This subpart prescribes requirements concerning personal protection on OCS facilities.

§ 142.24 Use of equipment.

(a) Each holder of a lease or permit issued under the Act shall ensure that all personnel who are required by this subpart to use or wear personal protective equipment do so when within the lease area or the area covered by the permit

(b) Persons responsible for actual operations shall ensure that all personnel engaged in the operation properly use or wear the personal protective equipment specified by this subpart.

§ 142.27 Eye and face protection.

(a) Personnel engaged in or observing welding, grinding, machining, chipping, handling hazardous materials, or acetylene burning or cutting shall wear the eye and face protector specified for the operation in Figure 8 of ANSI Z87.1.

(b) Eye and face protectors must be maintained in good condition.

(c) Each eye and face protector must be marked with the information required by ANSI Z87.1 for that type of protector.

§ 142.30 Head protection.

(a) Personnel in areas where there is a hazard of falling objects or of contact with electrical conductors shall wear a head protector meeting the specifications of ANSI Z89.1, for the hazard involved.

(b) Each head protector must be marked with the information specified by ANSI Z89.1 for that type of protector and for the hazard involved.

§ 142.33 Foot protection.

(a) Personnel working in areas or engaged in activities in which there is a potential for foot injury shall wear footwear meeting the specifications of ANSI Z41, except when environmental conditions that present a hazard greater than that against which the footwear is designed to protect.

(b) Each pair of footwear must be marked with the information specified by ANSI Z41 for the type of footwear.

§ 142.36 Protective clothing.

Personnel in areas where there are flying particles, molten metal, radiant energy, heavy dust, or hazardous materials shall wear clothing and gloves providing protection against the hazard involved.

§ 142.39 Respiratory protection.

(a) Personnel in an atmosphere specified under ANSI Z88.2, requiring the use of respiratory protection equipment shall wear the type of respiratory protection equipment specified in ANSI Z88.2 for that atmosphere.

(b) Before personnel enter an atmosphere specified under ANSI Z88.2 requiring the use of respiratory protection equipment, the persons listed in § 142.4 shall ensure that the personnel entering the atmosphere—

(1) Follow the procedures stated in Section 6 of ANSI Z88.2 concerning the proper selection of a respirator and individual fit testing;

(2) Are trained in the matters set forth in Section 7 of ANSI Z88.2 concerning proper use of the equipment to be used; and

(3) Are made aware, in terminology understandable to the personnel entering the atmosphere, of the generally recognized short and long term harmful effects of exposure to the atmosphere involved.

(c) All respiratory protection equipment must be approved, used, and maintained in accordance with ANSI Z88.2.

§ 142.42 Safety belts and lifelines.

(a) Except when moving from one location to another, personnel engaged in an activity where there is a hazard of falling 10 or more feet shall wear a safety belt or harness secured by a lanyard to a lifeline, drop line, or fixed anchorage.

(b) Each safety belt, harness, lanyard, lifeline, and drop line must meet the specifications of ANSI A10.14.

§ 142.45 Personal flotation devices.

Personnel, when working in a location such that, in the event of a fall, they would likely fall into water, shall wear a work vest that meets the requirements of 33 CFR 146.20 or a life preserver that meets the requirements of 46 CFR 160.002, 160.005, or 160.055, except when using the safety belts and lifelines required by § 142.42.

§ 142.48 Eyewash equipment.

Portable or fixed eyewash equipment providing emergency relief must be immediately available near the drill floor and each mudroom.

Subpart C—General Workplace Conditions

§ 142.81 Purpose and applicability.

This subpart prescribes requirements relating to general working conditions on OCS facilities.

§ 142.84 Housekeeping.

All staging, platforms, and other working surfaces and all ramps, stairways, and other walkways must be kept clear of tools, materials, and equipment not in use and be promptly cleared of substances which create a slipping hazard. When engaged in an activity on the drill floor in which the spillage of drilling fluid is inevitable, such as when pulling wet strings of drill pipe. Footwear and flooring designed to substantially reduce slipping may be used instead of keeping the drill floor free of drilling fluid during the activity.

§ 142.87 Guarding of deck openings.

Openings in decks accessible to personnel must be covered, guarded, or otherwise made inaccessible when not in use. The manner of blockage shall prevent a person's foot or body from inadvertently passing through the opening.

§ 142.90 Lockout and tagout.

(a) While repair or other work is being performed on equipment powered by an external source, that equipment must be locked out as required paragraph (b) of this section or, if a lockout provision does not exist on the equipment, must be disconnected from the power source or otherwise deactivated, unless the nature of the work being performed necessitates that the power be connected or the equipment activated.

(b) If the equipment has a lockout or other device designed to prevent unintentional activation of the equipment, the lockout or other device must be engaged while the work is being performed on the equipment, unless the nature of the work being performed necessitates that the equipment be activated.

(c) A tag must be placed at the point where the equipment connects to a power source and at the location of the control panel activating the power, warning—

(1) That equipment is being worked on; and

(2) If the power source is disconnected or the equipment deactivated, that the power source must not be connected or the equipment activated.

(d) The tags must not be removed without the permission of either the person who placed the tags, that

person's immediate supervisor, or their respective reliefs.

J.S. Gracey,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 86-15293 Filed 7-9-86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Part 200

Elementary and Secondary Education; Financial Assistance to Local Educational Agencies To Meet Special Educational Needs of Disadvantaged Children

AGENCY: Department of Education.

ACTION: Final regulations; OMB approval of information collection requirements.

SUMMARY: The Secretary of Education amends Part 200 to display and codify the control number assigned by the Office of Management and Budget (OMB) to information collection requirements contained in the regulations. The Department must display and codify the control number to comply with applicable statutory and regulatory requirements. Publication of this control number informs the public that OMB has approved the information collection requirements and that they take effect on the date this document is published in the **Federal Register.**

EFFECTIVE DATE: July 10, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 5004, ROB-3), Washington, DC 20202. Telephone: (202) 245-9846.

SUPPLEMENTARY INFORMATION: Final regulations for Part 200 were published on May 19, 1986 at 51 FR 18024, when it was noted that § 200.53 concerning consultation with parents and teachers and § 200.54 concerning schoolwide projects contained information collection requirements under review by OMB. The Secretary promised to publish a notice giving the effective date of §§ 200.53 and 200.54 by amending the regulations to display the control number assigned by OMB.

Display and codification of OMB control numbers is required by OMB under the authority of the Paperwork Reduction Act of 1980. OMB published regulations implementing provisions of the Act concerning collection of information in 5 CFR Part 1320 on March 31, 1983 (48 FR 13666).

Information collection requirements in §§ 200.53 and 200.54 have been approved by OMB and assigned control number 1810-0527.

It is the practice of the Department of Education to provide an opportunity for public comment on regulations. However, the Secretary has determined that public comment is unnecessary under 5 U.S.C. 553(b)(B) because this amendment is technical in nature and will not have a substantive impact.

List of Subjects in 34 CFR Part 200

Education, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Juvenile delinquency, Neglected, Private schools, Reporting and recordkeeping requirements, State-administered programs.

(Catalog of Federal Domestic Assistance No. 84.010, Educationally Deprived Children-Local Educational Agencies)

Dated: July 7, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 200 of Title 34 of the Code of Federal Regulations as follows:

PART 200—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

§§ 200.53 and 200.54 [Amended]

Sections 200.53 and 200.54 are amended by inserting "(Approved by the Office of Management and Budget under control number 1810-0527)" after the citation of authority at the end of each section.

[FR Doc. 86-15552 Filed 7-9-86; 8:45 am]

BILLING CODE 4000-01-M

VETERANS ADMINISTRATION

38 CFR Part 17

Eligibility for Medical Benefits; Evidence of Inability to Defray Necessary Medical Expenses

AGENCY: Veterans Administration.

ACTION: Final Regulation.

SUMMARY: The Veterans Administration (VA) has amended its "Medical Series" regulations to conform with changes to several sections of Title 38, United States Code, enacted with the passage of Title XIX of Pub. L. 99-272, "The Veterans' Health Care Amendments of 1986," significantly affecting veterans eligibility for health care benefits. Pub. L. 99-272 establishes different categories of eligibility for VA care. That law directs the VA to arrange for hospital care, and authorizes the Agency to furnish nursing home and outpatient care to one category of veterans. These include all service-connected veterans, former prisoners of war, other specially designated groups of veterans, and nonservice-connected veterans with incomes below a threshold established by the law. Other nonservice-connected veterans may be furnished hospital, nursing home, and outpatient care to the extent that resources and facilities are otherwise available. Nonservice-connected veterans with incomes in excess of the higher of the two thresholds specified in the law may obtain VA care, if they agree to pay a copayment. Nonservice-connected veterans with incomes between the lower and higher thresholds specified in the law may be furnished care by the VA without charge.

The law eliminated the previously existing eligibility of veterans 65 and over to receive cost free care regardless of their ability to pay for care.

EFFECTIVE DATE: These regulations are effective July 1, 1986. This date is the effective date specified in the statute.

FOR FURTHER INFORMATION CONTACT: Karen Walters, Chief, Policies and Procedures Division, Medical Administration Service, Department of Medicine and Surgery, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389-2337.

SUPPLEMENTARY INFORMATION: Comments from six organizations were received concerning the proposed regulatory changes published on pages 17651-17656 of the **Federal Register** of May 14, 1986.

Five comments were received concerning the issue that the Veterans Administration "shall" provide hospital care to the veterans listed in § 17.47(a). The commentators expressed disapproval of language in proposed § 17.47(b) which sets forth with specificity, the nature of VA's obligation to provide hospital care. Several of these commentators stated that "shall" means "shall," and that 38 U.S.C. 610(a)(1) creates an entitlement to care. One of the commentators expressed the view that the congressional authorizing committees which drafted this legislation had differing interpretations of the meaning of the term "shall," and that the Agency should not implement final regulations until the committees resolve this difference.

The VA is clearly required to implement the changes in VA health care eligibility, and to do so in accordance with an effective date set

relatively shortly after the date of the law's enactment. VA could not, therefore, defer implementation of the law until the congressional committees resolved questions of interpretation. Moreover, under section 610(b)(1) of Title 38, United States Code, the Administrator of Veterans Affairs is responsible for the proper execution and administration of these provisions. The Administrator must, therefore, take appropriate steps to implement the pertinent provisions of Pub. L. 99–272.

A statute's terms are normally to be interpreted in light of the usual meaning of the words themselves. Read in the context of provisions of chapter 17 of Title 38, United States Code, and specifically in light of limitations on the authority in section 603 to contract for care, it cannot be said that the meaning of the term "shall" in section 610(a)(1) is clear and unambiguous. In such a context it is appropriate to consult the legislative history underlying the statutory provision.

The joint explanatory statement regarding subtitle A of title XIX (Veterans' Programs) of the Omnibus Budget Reconciliation Act of 1985 provides a lucid discussion regarding the conference agreement of section 19011(a) of the Public Law and specifically on new section 610(a)(1). VA's proposed regulations were drafted to give effect to that discussion of VA's obligation to provide care. The regulations did effect acknowledgement of a requirement that the Veterans Administration provide hospital care to the categories of veterans listed in § 17.47(a). However, the language in the conference agreement accompanying the bill which became Pub. L. 99–272, did make it clear that nonemergent hospital care cannot necessarily be provided at a specific VA health care facility to veterans at the time it is requested. VA referral agreements between facilities will be utilized to treat veterans eligible for care under § 17.47(a) and contract care will be provided if necessary when authorized by § 17.50(b).

In essence, the comments on the proposed regulation did not lay a foundation for VA to disregard this important source of guidance regarding the meaning of section 610(a)(1), and therefore, no change is being made to § 17.47(b) of the regulations.

One comment questioned whether the veterans listed in § 17.47(a) would be subject to the provisions of the means test. Veterans listed under § 17.47(a) would not be requested to provide income data, with one exception, since an eligibility determination can be made by their status as service-connected veterans, former prisoners-of-war, World War I veterans, etc. The exception is for nonservice-connected veterans who are in Category A by virtue of their inability to defray the costs of care. Their eligibility can only be determined by requesting income data and net worth information.

Two comments were received questioning the omission of certain veterans from § 17.50b. Pub. L. 99–272 recodified the VA's authority to provide non-VA hospital and medical services at VA expense into a new section 603 of Title 38, U.S.C. While the VA is obligated to arrange for hospital care in VA (or other Federal) facilities to all so-called Category "A" veterans (i.e., those identified in 38 U.S.C. 610(a)(1)) not all veterans in Category A are authorized non-VA care by section 603. For example, former POWs and veterans of WWI are groups to whom the VA must furnish hospital care under section 603. The final regulations are unchanged and reflect the limits set by the statute.

One comment expressed the view that the regulations incorrectly characterize the law as creating three levels or categories of eligibility for hospital care. The commentator stated that, in fact, a two-tier eligibility system was created, the first tier consisting of those veterans to whom VA "shall" provide care, and the second tier consisting of those veterans to whom VA "may" provide care. The second tier is further subdivided into two groups, those characterized by VA as Category B and Category C, the latter being required to agree to pay a copayment as a prerequisite to eligibility for care. The commentator suggests that all veterans in the second tier (Category B and C) should have equal priority for care, and that the regulations incorrectly provide that Category C veterans are eligible only to the extent that resources are available and not required to assure that VA can furnish care to veterans in Categories A and B.

VA agrees that both the law and the conference agreement suggest that a two-tier eligibility system was created, with the second tier being divided into two parts. VA simply considered the two parts of the second tier as separate eligibility categories, which, when combined with the first tier, make three categories. More significantly, the proposed regulation was drafted to reflect a distinction in law between Category B and Category C, and to reflect that veterans in Category B do have a higher priority for care. Pub. L. 99–272 provides that Category B veterans (i.e., those identified in § 610(a)(2)(A) of Title 38, U.S. Code) are eligible for care "To the extent that resources and facilities are available." It provides that Category C veterans (i.e., those identified in section 610(a)(2)(B)) are eligible for care "to the extent that resources and facilities are *otherwise* available." Emphasis added. Use of the word "otherwise" clearly indicates that Category C veterans have a lower priority for care than Category B veterans. The fact that Category B veterans have a higher priority is also entirely consistent with the history of the VA health care eligibility scheme which has always provided that VA should care for those nonservice-connected veterans who are the least able to defray the cost of their own care. The lower income Category B veterans clearly have a greater priority for care by virtue of their financial status than do those in Category C. Accordingly, no change in the regulations will be made as a result of this comment.

The same commentator also suggested that VA incorrectly used the words "inability to defray the expenses of care" in describing the eligibility of Category B veterans, and failed to distinguish between Category A and B veterans in the use of the phrase. It is true that the law uses that phrase only in describing the eligibility of certain Category A veterans. VA chose to also use it in the regulations to describe the income thresholds for Category B veterans. A clear distinction was drawn in the proposed regulation between its use for Category A and B veterans. Nevertheless, as a matter of technical accuracy, VA is revising the regulation to eliminate use of the phrase to describe eligibility criteria for Category B veterans.

Three comments were received regarding the authority of the Chief Medical Director to establish priorities for medical care, and one commentator suggested that if priorities for hospital care to be promulgated, that should be done by regulation. It is VA's view that the changes made by Pub. L. 99–272 did not change the authority of the Agency, contained in 38 U.S.C. 210 and 621, to establish such priorities as may be necessary for the efficient administration of the VA health care system. VA intends to provide hospital care to all veterans in Category A, but it is necessary, for example, that VA distinguish between medically emergent care, and routine care. Priorities are established to permit efficient operation of VA medical centers and, particularly, to assure prompt delivery of health care. Section 17.49 is included in the regulations to provide notice to the public that the VA has the authority to establish priorities for hospital care. The specific priorities, which are

management tools, are not set forth in the regulations because there is need for flexibility in a health care system that must be able to adjust to dynamic change.

Comments were also received proposing changes to regulations governing eligibility for VA domiciliary care. Pub. L. 99–272 did not change domiciliary eligibility. Since this rulemaking is intended to implement Pub. L. 99–272, changes to provisions covering domiciliary eligibility are not being made.

Many commentators raised questions regarding copayment obligations. Among these, one comment was received regarding the appropriateness of charging a copayment to a veteran who completes an application for care, but who receives no medical care on the date of completion of the application. In a similar vein, a commentator questioned whether a copayment will be charged for an examination conducted in connection with an application for care. VA will not charge a copayment when a veteran applies for care. When VA provides an examination in connection with an application for care involving, for example, diagnostic testing, and the veteran is found not to require care, the veteran has clearly been furnished medical services. Thus, the law requires that a copayment be charged to a veteran in Category C.

One commentator suggested that the VA amend its proposed regulations to waive the copayment in the case of a veterans whose income is in excess of the established thresholds and who is transferred to a VA facility from a private hospital after incurring a Medicare deductible at the private hospital. The commentator felt that the copayment to the VA would be unfair. The final regulation leaves unchanged the requirement for copayment to the VA in such a circumstance. Veterans with incomes in excess of the thresholds specified by the statute establish eligibility for VA medical care by agreeing to make copayments to the VA. Eligibility for VA care is independent of eligibility for other Federal programs, such as Medicare.

Two comments were received addressing the situation of a veteran who makes a copayment for care and who later is awarded service-connection with the effective date of service-connection retroactive to the time during which the veteran had paid the VA a deductible. Both comments asked how the Agency would reimburse the veteran for payments made. VA intends to refund any copayment incorrectly charged to and paid by a veteran. That would occur either when a veteran is awarded retroactive service-connection, as pointed out by the commentator, or when a veteran is tentatively placed in Category C while the net worth level is developed by the VA. In the latter case, if VA determines a veteran was incorrectly placed tentatively in Category C, any copayment paid by the veteran would be refunded. To make it explicitly clear that such refunds will be made, a new paragraph (5) is being added to § 17.48(e).

A third new paragraph was also added to §17.48(e) to clarify that in the event a veteran provides inaccurate information on an application and is incorrectly placed in eligibility Category A or B rather than Category C, the VA may retroactively bill the veteran for the applicable copayment.

One commentator raised a concern with respect to veterans who experience a catastrophic illness and under the proposed regulations are eligible for care only as long as they agree to make the applicable copayments. The commentator suggested that VA revise the regulations to establish a special mechanism to assure that such veterans may receive VA care.

Under the law, all veterans with income in excess of Category B threshold (income above $20,000 if single, $25,000 if married plus $1,000 for each additional dependent) are eligible for care if they agree to pay the copayment prescribed by the new law. The hypothetical veteran described by the commentator, who has a $50,000 annual income and $100,000 in expected medical expenses is clearly eligible for VA care if agreement is made to pay the copayment. However, under the law, care may be provided to that veteran only "to the extent that resources and facilities are otherwise available." The law provides no basis for establishing a special eligibility mechanism to accommodate such a case.

In a case such as described, if a bed is not available at the facility to which the veteran applies, at the time of application, care may not be furnished at that facility absent an emergency requiring immediate treatment. Nevertheless, VA would attempt to schedule the veteran for care when a bed becomes available, or attempt to locate a bed in another VA facility that could provide the needed care in a more timely fashion. The veteran would be advised of the availability of care in the other VA facility.

While VA cannot revise the regulations to adopt this suggestion, it is noteworthy that the proposed regulations do make provision at §17.8(d)(6) for certain hardship situations as provided for in Pub. L. 99–272.

Three commentators requested clarification on the use by the VA of the authority in §17.48(f) to determine that veterans who fail to pay copayments will be ineligible for care. Commentators expressed the importance of exceptions, particularly in emergency situations. VA intends to promulgate guidelines to ensure that the provision will be fair, consistently applied in all VA facilities, and not otherwise arbitrary. Those guidelines will provide that no veteran who fails to pay a copayment will be denied care in an emergency situation; in a situation where immediate care is deemed medically essential; where an ongoing course of essential medical treatment would be interrupted under circumstances where it would not be reasonably available elsewhere, and failure to continue the course of treatment would be either life-threatening or result in a serious deterioration of the medical condition being treated; or where the veteran is eligible for care under another provision of law. Section 17.48(f) is being amended to clarify that the provision can only be exercised in accordance with such administrative guidelines.

One comment was received requesting the addition of language giving the veteran the right to appeal to the Board of Veterans Appeals the VA's decision that the veteran must agree to make copayments to establish eligibility for medical care. The final regulations does not contain a provision on this subject since appeal rights are already clearly outlined in provisions of 38 CFR Chapter 19. The administrative determination of income as it relates to the veteran's claim for medical benefits is to be determined in essentially the same manner as it is in determining eligibility for pension. The right to appeal this question is clearly within the purview of the Board of Veterans Appeals.

One organization raised numerous questions regarding VA's policy and procedures in entering into so-called "sharing" agreements and contracts for medical services. These questions more properly deal with other regulations and sections of Title 38 (38 CFR 17.3) than with the eligibility of individual veterans for non-VA care which is the subject of these regulations and the section recodified by Pub. L. 99–272. Pub. L. 99–272 made no amendments to those sections of the code regarding VA's authority for contracting for scarce or specialized medical resources. For this reason, the questions submitted by the organization on VA's contracting

practices will not be addressed in the final regulation.

One comment was received regarding references to 38 CFR 17.47(e), stating that this subsection did not exist. The comment is incorrect. In the Proposed Rules, paragraph 2 (immediately preceding changes to 38 CFR 17.47) states that the former §17.47(c)(3) is redesignated as §17.47(e)(1) and that the former §17.47(d)(3) is redesignated as §17.47(e)(2).

One comment indicated that the "Republic of Puerto Rico" should be referred to as the "Commonwealth of Puerto Rico." The text was changed to reflect the Commonwealth status of Puerto Rico.

In accordance with Pub. L. 99-166, §17.60(f) is amended by the VA to provide outpatient medical services for nursing home and domiciliary patients after discharge. Section 17.60(f) is amended to read "For post-hospital, nursing home and domiciliary care."

Nonservice-connected veterans eligible for home improvement and structural alterations are not subject to the limitations of §17.60(m), therefore §17.60(j) is amended by the VA to read "Subject to the limitations of paragraph (m) of this section except for care provided under (2)(i).

Executive Order 12291

The Administrator has determined that this proposed rule is not a major rule as that term is defined by Executive Order 12291 on Federal Regulation. The annual effect on the economy would be less than $100 million.

Paperwork Reduction Act of 1980

Information collection requirements contained in these regulations in § 14.48(f)(1) have 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 2900-0471.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs, Health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Veterans.

(The Catalog of Federal Domestic Assistance number is 64.009, 64.010 and 64.011.)

Approved: June 30, 1986.

Thomas K. Turnage,

Administrator of Veterans Affairs.

PART 17—[AMENDED]

38 CFR Part 17, MEDICAL, is proposed to be amended as follows:

§ 17.30 [Amended]

1. In § 17.30, paragraph (w)(3) is removed.

2. Section 17.47, paragraph (c)(3) is redesignated as paragraph (e)(1), paragraph (d)(3) is redesignated as paragraph (e)(2), and paragraphs (a), (b), (c) and (d) are revised to read as follows:

§ 17.47 Eligibility for hospital, domiciliary or nursing home care of persons discharged or released from active military, naval, or air service.

(a) Hospital care shall be furnished and nursing home care may be furnished when needed to:

(1) A veteran who has a service-connected disability, for any disability;

(2) A veteran whose discharge or release from the active military, naval, or air service was for a disability incurred or aggravated in line of duty for any disability;

(3) A veteran who, but for a suspension pursuant to 38 U.S.C. 351 (or both such a suspension and the receipt of retired pay), would be entitled to disability compensation, but only to the extent that such veteran's continuing eligibility for such care is provided for in the judgment or settlement described in such section, for any disability;

(4) A veteran who is a former prisoner of war, for any disability;

(5) A veteran exposed to a toxic substance or radiation as authorized in 38 U.S.C. 610(e);

(6) A veteran of the Spanish-American War, the Mexican Border Period, or World War I, for any disability; and

(7) A veteran for a nonservice-connected disability if the veteran is unable to defray the expenses of necessary care as determined under § 17.48(d)(1). (38 U.S.C. 610, 622; sec. 19011, Pub. L. 99-272)

(b) In furnishing hospital care under paragraph (a) of this section, VA officials shall:

(1) If the veteran is in immediate need of hospitalization, furnish care at the VA facility where the veteran applies or, if that facility is incapable of furnishing care, arrange to admit the veteran to the nearest VA medical center, or Department of Defense hospital with which the VA has a sharing agreement under 38 U.S.C. 5011, which is capable of providing the needed care, or if VA or DOD facilities are not available, arrange for care on a contract basis if authorized by § 17.50(b); or

(2) If the veteran needs non-immediate hospitalization, schedule the veteran for admission at the VA facility where the veteran applies, if the schedule permits, or refer the veteran for admission or scheduling for admission at the nearest VA medical center, or Department of Defense facility with which the VA has a sharing agreement under 38 U.S.C. 5011. (38 U.S.C. 603, 610; secs. 19011-19012, Pub. L. 99-272)

(c) To the extent resources and facilities are available, the Chief Medical Director may furnish needed hospital and nursing home care in VA facilities to a veteran for a nonservice-connected disability if the veteran is eligible for care as determined under § 17.48(d)(2). (38 U.S.C. 610, 622; sec. 19011, Pub. L. 99-272)

(d) To the extent resources and facilities are otherwise available and are not otherwise required to assure that VA can furnish needed care to veterans described in paragraph (a) or (c) of this section, the Chief Medical Director may furnish needed hospital and nursing home care in VA facilities to a veteran who is not described in paragraph (a) or (c) of this section for any disability if the veteran agrees to pay to the United States an amount as determined in § 17.48(e). (38 U.S.C. 610; sec. 19011, Pub. L. 99-272)

* * * * *

3. In § 17.48 paragraphs (e) through (h) are redesignated as (h) through (k); paragraph (g) is reserved; paragraphs (b) through (d) are revised, and new paragraphs (e), (f) and (l) are added to read as follows:

§ 17.48 Considerations applicable in determining eligibility for hospital, nursing home or domiciliary care.

* * * * *

(b)(1) Under § 17.47(a), veterans who are receiving disability compensation awarded under § 3.800 of this title, where a disease, injury or the aggravation of an existing disease or injury occurs as a result of VA examination, medical or surgical treatment, or of hospitalization in a VA health care facility or of participation in a rehabilitation program under 38 U.S.C. ch. 31, under any law administered by the VA and not the result of his/her own willful misconduct. Treatment may be provided for the disability for which the compensation is being paid or for any other disability. Treatment under the authority of § 17.47(a) may not be authorized during any period when disability compensation under § 3.800 of this title is not being paid because of the

provision of § 3.800(a)(2), except to the extent continuing eligibility for such treatment is provided for in the judgment for settlement described in § 3.800(a)(2) of this title. (38 U.S.C. 610(a); sec. 701, Pub. L. 98–160, Pub. L. 99–272)

(2) Under § 17.47(e), "no adequate means of support"—when an applicant is receiving an income of $415 or more per month from any source for personal use, this fact will be considered prima facie evidence of adequate means of support. This is subject to rebuttal by a showing that such income is not adequate to provide the care required by reason of the veteran's disability or that the income is not available for the veteran's use because of other obligations such as contributions in whole or in part to the support of a spouse, child, mother or father. In all such cases of alleged inadequate means of support, the circumstances will be submitted to the Director for decision. (38 U.S.C. 610(a); sec. 701, Pub. L. 98–160, Pub. L. 99–272)

(c) A "disability, disease, or defect" will comprehend any acute, subacute, or chronic disease (or a general medical, tuberculous, or neuropsychiatric type) of any acute, subacute, or chronic surgical condition susceptible of cure or decided improvement by hospital care; or any condition which does not require hospital care for an acute or chronic condition but requires domiciliary care. Domiciliary care, as the term implies, is the provision of a home, with such ambulant medical care as is needed. To be provided with domiciliary care, the applicant must consistently have a disability, disease, or defect which is essentially chronic in type and is producing disablement of such degree and probable persistency as will incapacitate from earning a living for a prospective period. (38 U.S.C. 601, 610)

(d)(1) For purposes of determining eligibility for hospital or nursing home care under § 17.47(a), a veteran will be determined unable to defray the expenses of necessary care if the veteran agrees to provide verifiable evidence, as determined by the Administrator, that:

(i) The veteran is eligible to receive medical assistance under a State plan approved under title XIX of the Social Security Act; (42 U.S.C. 1396 et seq.)

(ii) The veteran is in receipt of pension under 38 U.S.C. 521; or

(iii) The veteran's attributable income does not exceed $15,000 if the veteran has no dependents, $18,000 if the veteran has one dependent, plus $1,000 for each additional dependent. (38 U.S.C. 622; sec. 19011, Pub. L. 99–272)

(2) For purposes of determining eligibility for hospital or nursing home care under § 17.47(c), a veteran will be determined eligible for necessary care if the veteran agrees to provide verifiable evidence, as determined by the Administrator, that: the veteran's attributable income does not exceed $20,000 if the veteran has no dependents, $25,000 if the veteran has one dependent, plus $1,000 for each additional dependent. (38 U.S.C. 622; sec. 19011, Pub. L. 99–272)

(3) Effective on January 1 of each year after calendar year 1986, the amounts set forth in paragraph (d) (1) and (2) of this section shall be increased by the percentage by which the maximum rates of pension were increased under 38 U.S.C. 311(a), during the preceding year. (38 U.S.C. 622; sec. 19011, Pub. L. 99–272)

(4) Determinations with respect to attributable income made under paragraph (d) (1) and (2) of this section, shall be made in the same manner, including the same sources of income and exclusions from income, as determinations with respect to income are made for determining eligibility for pension under §§ 3.271 and 3.272 of this title. The term "attributable income" means income of a veteran for the calendar year preceding application for care, determined in the same manner as the manner in which a determination is made of the total amount of income by which the rate of pension for such veteran under 38 U.S.C. 521 would be reduced if such veteran were eligible for pension under that section. (38 U.S.C. 622; sec. 19011, Pub. L. 99–272)

(5) Notwithstanding the attributable income of a veteran, the VA may determine that such veteran is not eligible under paragraph (d) (1) and (2) of this section if the corpus of the estate of the veteran is such that under all the circumstances it is reasonable that some part of the corpus of the estate of the veteran be consumed for the veteran's maintenance. The corpus of the estate of a veteran shall be determined in the same manner as determinations are made with respect to the determinations of eligibility for pension under § 3.275 of this title. The term "corpus of the estate of the veteran" includes the corpus of the estates of the veteran's spouse and dependent children, if any. (38 U.S.C. 622; sec. 19011, Pub. L. 99–272)

(6) In order to avoid hardship the VA may determine that a veteran is eligible for care notwithstanding that the veteran does not meet the income requirements established in paragraph (d)(1)(iii) or (d)(2) of this section, if projections of the veteran's income for the year following application for care are substantially below the income requirements established in paragraph (d)(1)(iii) or (d)(2) of this section. (38 U.S.C. 622; sec. 19011, Pub. L. 99–272)

(e)(1) A veteran who receives hospital or nursing home care under §17.47(d) shall be liable to the United States, for each 90 days of care, or fraction thereof, in a 365 day period, for an amount equal to the lesser of:

(i) The cost of furnishing such care, as determined by the Chief Medical Director, and

(ii) In the case of hospital care, the amount of the inpatient Medicare deductible for the first 90 day period, and one-half that amount for each successive 90 day period, and in the case of nursing home care, the amount of the inpatient Medicare deductible for each 90 day period. (38 U.S.C. 622, sec. 19011, Pub. L. 99–272)

(2) If a veteran pays, or agrees to pay the inpatient Medicare deductible in connection with either hospital or nursing home care, and before using 90 days of such care begins receiving the other mode of care (hospital or nursing home) in a 365 day period, the veteran will not be required to make any payment for the second mode of care until either:

(i) The number of days of hospital or nursing home care combined exceeds 90 days, or

(ii) The beginning of the next 365 day period, whichever occurs first.

If the veteran pays an amount equal to one-half of the inpatient Medicare deductible in connection with receiving hospital care, and before using 90 days of such care within the 365 day period, receives VA nursing home care, the veteran will be required to pay one-half of the inpatient Medicare deductible in connection with the number of days of nursing home care that, when added to the days of hospital care, do not exceed 90 days within the 365 day period. (38 U.S.C. 622; sec. 19011, Pub. L. 99–272)

(3) A veteran who receives outpatient care under § 17.60(e) or (f) by virtue of the veteran's eligibility for hospital care under § 17.47(d) shall be liable to the United States for each outpatient visit for an amount equal to 20 percent of the average cost of an outpatient visit to a VA facility during the fiscal year in which the treatment is furnished, except that in any 90 day period in a 365 day period, the total amount of deductibles paid for multiple outpatient visits shall not exceed the amount of the inpatient Medicare deductible in effect at the beginning of the 365 day period. (38 U.S.C. 622; sec. 19011, Pub. L. 99–272)

(4) A veteran who receives any combination of hospital, nursing home, or outpatient care in any 90 day period in a 365 day period shall not be required to pay an amount greater than the inpatient Medicare deductible for care received during that 90 day period. (38 U.S.C. 622; sec. 19011, Pub. L. 99–272)

(5) The term "inpatient Medicare deductible" means the amount of the inpatient hospital deductible in effect under 42 U.S.C. 1813(b) on the first day of any 365 day period referred to in this paragraph. (38 U.S.C. 622; sec. 19011, Pub. L. 99–272)

(6) If VA determines that an individual was incorrectly charged a copayment, the VA will refund the amount of any copayment actually paid by that individual. (38 U.S.C. 210; sec. 19011, Pub. L. 99–272)

(7) In the event a veteran provided inaccurate information on an application and is incorrectly deemed eligible for care under § 17.47 (a) or (c), rather than § 17.47(d), the VA shall retroactively bill the veteran for the applicable copayment. (38 U.S.C. 210 and 610; sec. 19011, Pub. L. 99–272)

(f) If a veteran who receives hospital or nursing home care under § 17.47(d), or outpatient care under § 17.60 (e) or (f) by virtue of the veteran's eligibility for hospital care under § 17.47(d), fails to pay to the United States the amounts agreed to under those sections shall be grounds for determining, in accordance with guidelines promulgated by the Chief Medical Director, that the veteran is not eligible to receive further care under those sections until such amounts have been paid in full. (38 U.S.C. 610, 621; sec. 19011, Pub. L. 99–272).

* * * * *

(1) In seeking medical care from the VA under § 17.47 or § 17.60, a veteran shall furnish such information and evidence as the Administrator may require to establish eligibility. (38 U.S.C. 622; sec 19011, Pub. L. 99–272)

4. Section 17.49 is revised to read as follows:

§ 17.49 Priorities for inpatient care.

The Chief Medical Director may establish priorities for admission to hospital, nursing home, and domiciliary care consistent with § 17.47 to facilitate management of VA health care facilities and to help assure prompt delivery of care. (38 U.S.C. 210 and 621)

5. Section 17.50b is revised to read as follows:

§ 17.50b Hospital care and medical services in non-VA facilities.

(a) When VA facilities or other government facilities are not capable of furnishing economical hospital care or medical services because of geographic inaccessibility or are not capable of furnishing care or services required, the VA may contract with non-VA facilities for care in accordance with the provisions of this section. When demand is only for infrequent use, individual authorizations may be used. Care in public or private facilities, however, subject to the provisions of § 17.50 (c) through (f), will only be authorized, whether under a contract or an individual authorization, for

(1) Hospital care or medical services to a veteran for the treatment of—

(i) A service-connected disability; or

(ii) A disability for which a veteran was discharged or released from the active military, naval, or air service or

(iii) For a disability associated with and held to be aggravating a service-connected disability, or

(iv) For any disability of a veteran participating in a rehabilitation program under 38 U.S.C. ch. 31 and when there is a need for hospital care or medical services for any of the reasons enumerated in § 17.48(j). (38 U.S.C. 603, 1504; sec. 101, Pub. L. 96–466; sec. 19012, Pub. L. 99–272)

(2) Medical services for the treatment of any disability of—

(i) A veteran who has a service-connected disability rated at 50 percent or more,

(ii) A veteran who has received VA inpatient care for treatment of nonservice-connected conditions for which treatment was begun during the period of inpatient care. The treatment period (to include care furnished in both facilities of the VA and non-VA facilities or any combination of such modes of care) may not continue for a period exceeding 12 months following discharge from the hospital except when it is determined that a longer period is required by virtue of the disabilities being treated, and

(iii) A veteran of the Mexican Border Period or World War I or who is in receipt of increased pension or additional compensation based on the need for aid and attendance or housebound benefits when it has been determined based on an examination by a physician employed by the VA (or, in areas where no such physician is available, by a physician carrying out such function under a contract or fee arrangement), that the medical condition of such veteran precludes appropriate treatment in VA facilities; (38 U.S.C. 603; sec. 19012, Pub. L. 99–272)

(3) Hospital care or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a veteran receiving hospital care or medical services in a facility over which the Administrator has direct jurisdiction or government facility with which the Administrator contracts, and for which the facility is not staffed or equipped to perform, and transfer to a public or private hospital which has the necessary staff or equipment is the only feasible means of providing the necessary treatment, until such time following the furnishing of care in the non-VA facility as the veteran can be safely transferred to a VA facility; (38 U.S.C. 603; sec. 19012, Pub. L. 99–272)

(4) Hospital care for women veterans; (38 U.S.C. 603; sec. 19012, Pub. L. 99–272)

(5) Through September 30, 1988, hospital care or medical services that will obviate the need for hospital admission for veterans in the Commonwealth of Puerto Rico, except that the dollar expenditure in Fiscal year 1986 cannot exceed 85% of the Fiscal year 1985 obligations, in Fiscal year 1987 the dollar expenditure cannot exceed 50% of the Fiscal year 1985 obligations and in Fiscal year 1988 the dollar expenditure cannot exceed 25% of the Fiscal year 1985 obligations. (38 U.S.C. 603; sec. 102, Pub. L. 99–166; sec. 19012, Pub. L. 99–272)

(6) Hospital care or medical services that will obviate the need for hospital admission for veterans in Alaska, Hawaii, Virgin Islands and other territories of the United States except that the annually determined hospital patient load and incidence of the furnishing of medical services to veterans hospitalized or treated at the expense of the VA in government and non-VA facilities in each such State or territory shall be consistent with the patient load or incidence of the provision of medical services for veterans hospitalized or treated by the VA within the 48 contiguous States. (38 U.S.C. 603; sec. 19012, Pub. L. 99–272)

(7) Outpatient dental services and treatment, and related dental appliances, for a veteran who is a former prisoner of war and was detained or interned for a period of not less that 181 days. (38 U.S.C. 603; sec. 19012, Pub. L. 99–272)

(8) Hospital care or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a veteran which developed during authorized travel to the hospital, or during authorized travel after hospital discharge preventing completion of travel to the originally designated point of return (and this will encompass any other medical services

necessitated by the emergency, including extra ambulance or other transportation which may also be furnished at VA expense. (38 U.S.C. 601(5))

(9) Diagnostic services necessary for determination of eligibility for, or of the appropriate course of treatment in connection with, furnishing medical services at independent VA outpatient clinics to obviate the need for hospital admission. (38 U.S.C. 603; sec. 19012, Pub. L. 99–272)

(b) The Chief Medical Director shall only furnish care and treatment under paragraph (a) of this section to veterans described in § 17.47(d)

(1) To the extent that resources are available and are not otherwise required to assure that VA can furnish needed care and treatment to veterans described in §17.47 (a) and (c), and

(2) If the veteran agrees to pay the United States an amount as determined in § 17.48(e). (38 U.S.C. 603, 610 and 612; sec. 19011–19012, Pub. L. 99–272)

6. Section 17.51 is revised to read as follows:

§ 17.51 Use of community nursing homes.

(a) Nursing home care in a contract public or private nursing home facility may be authorized for the following:

(1) Subject to the limitations of paragraph (a)(5) of this section, any veteran eligible for hospital, nursing home, or domiciliary care under § 17.47 who has attained the maximum benefit from such care and for whom a protracted period of nursing home care will be required. (38 U.S.C. 610, 620; sec. 19011, Pub. L. 99–272)

(2) Any person who has been furnished care in any hospital of any of the Armed Forces, who the appropriate Secretary concerned has determined has received maximum hospital benefits but requires a protracted period of nursing home care, and who upon discharge therefrom will become a veteran. (38 U.S.C. 620)

(3) Any veteran who requires nursing home care for a service-connected disability without first requiring a period of hospitalization. Admission may be authorized upon a determination of need therefore by a physician employed by the VA or, in areas where no such physician is available, by carrying out such function under contract or fee arrangement. (38 U.S.C. 620; sec. 108, Pub. L. 99–166)

(4) Any veteran who has been discharged from a hospital under the direct jurisdiction of the VA and is currently receiving VA hospital based home health services (Pub. L. 99–166). (38 U.S.C. 620; sec. 108, Pub. L. 99–166)

(5) To the extent that resources are available and are not otherwise required to assure that the VA can furnish needed care and treatment to veterans described in § 17.47 (a) and (c), the Chief Medical Director may furnish care under this paragraph to any veteran described in §17.47(d) if the veteran agrees to pay the United States an amount as determined in § 17.48(e). (38 U.S.C. 610, 620; sec. 19011, Pub. L. 99–272)

(b) Such nursing home care will be subject to the following restrictions:

(1) Any veteran eligible under paragraph (a)(1) of this section shall be transferred to the nursing home care facility from a hospital, nursing home or domiciliary under the direct jurisdiction of the VA, except as provided for in § 17.51b.

(2) The nursing home care facility is determined to meet the physical and professional standards prescribed by the Chief Medical Director, and

(3) The cost of the nursing home care will not exceed 45 percent of the cost of care furnished by the VA in a general medical center an determined annually. However, the Administrator upon the recommendation of the Chief Medical Director may approve a higher rate not to exceed 50 percent of the cost of such care.

(4) Except as provided for in § 17.51a, nursing home care will not be for more than 6 months in the aggregate in connection with any one transfer, except in the case of a veteran who requires nursing home care for a service-connected disability. In such case entitlement to nursing home care under this paragraph is not subject to any time limitation.

(5) The standards prescribed by the Chief Medical Director and any report of inspection of institutions furnishing nursing home care to veterans shall, to the extent possible, be made available to all Federal, State, and local agencies charged with the responsibility of licensing or otherwise regulating or inspecting such institutions. (38 U.S.C. 620(b))

7. Section 17.51a is revised to read as follows:

§ 17.51a Extensions of community nursing home care beyond 6 months.

Directors of health care facilities may authorize, for any veteran who requires nursing home care for a nonservice-connected disability, an extension of nursing care in a public or private nursing home care facility at VA expense beyond 6 months for circumstances of an unusual nature such as when a medical and economic need continues to exist, additional time is required to complete other arrangements for care, or when readmission to a hospital is not deemed professionally advisable despite terminal deterioration of the veteran's medical conditions. (38 U.S.C. 620; sec. 108, Pub. L. 99–166)

7a. Section 17.51b is revised to read as follows:

§ 17.51b Transfers from facilities for nursing home care in Alaska and Hawaii.

Transfer of any veteran hospitalized in a non-VA hospital facility or receiving domiciliary care at VA expense to a community nursing home facility in Alaska or Hawaii may be authorized subject to the provisions of § 17.51, except paragraph (b)(1). (38 U.S.C. 612A, Pub. L. 99–166)

8. The center heading preceding § 17.52 is revised to read:

Use of Services of Other Federal Agencies

§ 17.53 [Removed]

9. Section 17.53 is removed.

10. In § 17.60, the introductory text and paragraphs (e), (f), and (j) are revised; and new paragraph (m) is added so that the revised and added material reads as follows:

§ 17.60 Outpatient medical services for eligible persons.

To the extent resources and VA facilities are available, medical services may be furnished to the following applicants under the conditions stated, except that applicants for dental treatment must also meet the applicable provisions of § 17.123:

* * * * *

(e) *For pre-hospital care.* Subject to the limitations of paragraph (m) of this section, persons eligible for hospital care under § 17.47, where a professional determination is made that such care is reasonably necessary in preparation for admission of such persons for care, or (to the extent that facilities are available) to obviate the need for bed care. (38 U.S.C. 612; sec. 19011, Pub. L. 99–272)

(f) *For post-hospital, nursing home and domiciliary care.* Subject to the limitations of paragraph (m) of this section, persons eligible for hospital, nursing home or domiciliary care under § 17.47 who have been furnished hospital, nursing home or domiciliary care, and outpatient medical services are reasonably necessary to complete treatment incident to such hospital care. Said service may be provided not to exceed 12 months after discharge from

the inpatient treatment except where a staff physician finds that a longer period is required by virtue of the disability being treated. (38 U.S.C. 612; sec. 19011, Pub. L. 99–272)

* * * * *

(j) *Home health services.* Subject to the limitations of paragraph (m) of this section, except as provided under subparagraph (2)(i) of this paragraph, home health services determined by the VA to be necessary for effective and economical treatment of a disability may be furnished to any veteran to include home improvement and structural alterations as are necessary to assure the continuation of treatment or to provide access to the home or to essential lavatory and sanitary facilities.

(1) The cost to the VA or reimbursement by the VA to the veteran will not exceed $2,500 for home improvement or structural alterations to veterans being treated for a service-connected disability or to veterans being treated for a nonservice-connected disability who are rated 50% or more for a service-connected disability, and

(2) Will not exceed $600 for veterans being treated for a nonservice-connected disability and then only to (i) veterans receiving authorized post-hospital care under the authority of § 17.60(f), (ii) veterans of the Mexican Border Period or World War I; and (iii) those in receipt of aid and attendance or housebound benefits. (38 U.S.C. 612; sec. 19011, Pub. L. 99–272)

* * * * *

(m) To the extent that resources are available and are not otherwise required to assure that VA can furnish needed care and treatment to veterans described in § 17.47 (a) and (c), the Chief Medical Director may furnish treatment under paragraphs (e), (f) and (j) of this section to any veteran described in § 17.47(d) if the veteran agrees to pay the United States an amount as determined in § 17.48(e). (38 U.S.C. 612; sec. 19011, Pub. L. 99–272)

11. Section 17.60g is amended by adding new paragraphs (f) through (i) to read as follows:

§ 17.60g Priorities for medical services.

* * * * *

(f) To any veteran who is in receipt of pension under 38 U.S.C. 521.

(g) To any other nonservice-connected veteran deemed unable to defray the expenses of necessary care as determined by § 17.48(d)(1).

(h) To any nonservice-connected veteran deemed unable to defray the expenses of necessary care as determined by § 17.48(d)(2).

(i) To any nonservice-connected veteran eligible for VA hospital care under § 17.47(d) if the veteran agrees to pay the United States an amount as determined by § 17.48(e). (38 U.S.C. 612; sec. 19011, Pub. L. 99–272)

[FR Doc. 86–15547 Filed 7–9–86; 8:45 am]

BILLING CODE 8320–01–M

Proposed Rules

Federal Register
Vol. 51, No. 132
Thursday, July 10, 1986

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

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R-0571]

Reserve Requirements of Depository Institutions Definition of Deposit; Extension of Comment Period

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Board is extending from July 11, 1986, to August 11, 1986, the period for receipt of public comment on its proposal published in the Federal Register at 51 FR 16855, May 7, 1986 (Regulation D; Docket No. R-0571). The Board proposed amendments in order to clarify that certain types of transactions, particularly sales of assets by depository institutions where the depository institutions retain conditional liability for the assets sold and certain transactions with affiliates, give rise to deposits for the purposes of Regulation D. The Board initially established a sixty day comment period expiring on July 11, 1986. After receiving several requests for an extension of the comment period, the Board has decided to extend the closing date to August 11, 1986.

DATE: Comments must be received by August 11, 1986.

ADDRESS: Interested parties are invited to submit written data, views, or comments concerning the proposal to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or to deliver such comments to the Guard Station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) between 8:45 a.m. and 5:15 p.m. on business days. Submissions shall refer to Regulation D, Docket No. R-0571. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. on business days, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452-3778), or Patrick J. McDivitt, Attorney (202/452-3818), Legal Division; or Frederick H. Jensen, Economist (202/452-3022), Division of Research and Statistics; for users of Telecommunications Device for the Deaf (TDD) Earnestine Hill or Dorothea Thompson (202/452-3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

By order of the Board of Governors, acting through its Secretary under delegated authority, July 3, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-15491 Filed 7-9-86; 8:45 am]

BILLING CODE 6210-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

District Director Elections

AGENCY: Farm Credit Administration.

ACTION: Notice of intent.

SUMMARY: The Farm Credit Administration Board ("FCA Board") invites public comment on implementation of the at-large election provisions of the Farm Credit Amendments Act of 1985 ("1985 Amendments"). Specifically, the FCA Board invites comments on the impact of implementing the at-large election provisions of the 1985 Amendments either as appointive terms expire in respective districts, or simultaneously in all districts without regard to existing terms of appointed directors.

DATE: Comments should be submitted on or before September 15, 1986.

ADDRESS: Comments should be submitted in writing to Frederick R. Medero, General Counsel, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

FOR FURTHER INFORMATION CONTACT: Dorothy J. Acosta, Office of the General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020.

SUPPLEMENTARY INFORMATION: On June 27, 1986, a Petition in the Matter of Elections of the At-Large Members of Each Farm Credit District Board was filed with the Farm Credit Administration ("FCA") by a group of Farm Credit System ("System") borrowers requesting that the FCA issue nomination notices and hold seventh district director elections in each Farm Credit district. Prior to the enactment of the 1985 Amendments on December 23, 1985, the Farm Credit Act of 1971 ("Act") provided for the seventh member of each Farm Credit district board to be appointed by the Governor with the advice and consent of the Federal Farm Credit Board. The 1985 Amendments replaced the Governor and the part-time 13-member Federal Farm Credit Board with a full-time, three-person FCA Board headed by a Chairman. The statute also substituted a procedure for the direct election by System Shareholders of a director-at-large in place of FCA appointment of the seventh member of district boards.

The interim implementation provisions of the 1985 Amendments provide that all elections held and appointments made under the Act before the enactments of the 1985 Amendments remain valid until supserseded, modified or replaced under the authority of the 1985 Amendments. The statutory role of the FCA in administering the election of district directors was unchanged by the 1985 Amendments, but the election procedures will require certain adaptations to accommodate the election at-large of the seventh director.

Soon after the enactment of the 1985 Amendments, questions were raised about the effect of the new statute upon the terms of appointed directors of district boards. To allay concern over whether district boards could continue to function with appointive members and to protect district boards from possible third party challenges, the Acting Chairman issued a memorandum on January 29, 1986, that stated that district directors appointed and confirmed before December 23, 1985 (the date of enactment), and whose term commenced before January 22, 1986 (the effective date of the 1985 Amendments), could continue to serve out their terms. This opinion reflected the FCA's judgment at that time that the least disruptive method of implementing the at-large election provisions in the interim would be to phase them in as appointed directors' terms expire.

At its July 1, 1986 meeting, the FCA Board reviewed the Petition and determined that because of the potential impact of accelerated implementation on the composition of the various Farm Credit district boards it is appropriate that public comment on the implementation of the at-large provisions of the 1985 Amendments be solicited. Accordingly, the FCA Board directed that an appropriate notice for public comment be published in the **Federal Register.** In particular, the FCA Board is interested in comments on whether simultaneous implementation that would cut short the terms of appointed directors would disrupt the staggering of terms and result in an undesirable lack of continuity on the board. The FCA Board also invites comment on issues related to implementation of the at-large provisions of the 1985 Amendments and any other aspect of district direct elections that would be useful in the regulation of district board elections.

Frank W. Naylor, Jr.,

Chairman, Farm Credit Administration Board.

[FR Doc. 86-15574 Filed 7-9-86; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[LR-18-85]

Income Taxes; Special Rules Relating to Nuclear Decommissioning Costs

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register,** the Internal Revenue Service is issuing temporary regulations that provide special rules relating to nuclear decommissioning costs. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by September 8, 1986. The regulations are proposed to take effect on July 18, 1984, and to apply with respect to taxable years ending on or after such date.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-18-85), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: C. Scott McLeod of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T), (202) 566-3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations section of this issue of the **Federal Register** amend Parts 1 and 602 of Title 26 of the Code of Federal Regulations to provide rules relating to sections 88 and 468A of the Internal Revenue Code of 1954, as added by subsections 91 (c) and (f) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 604, 697). This document proposes to adopt those temporary regulations as final regulations; accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the proposed and temporary rules.

For the text of the temporary regulations, see FR Doc. 86-15616 (T.D. 8094) published in the Rules and Regulations section of this issue of the **Federal Register.**

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is C. Scott McLeod of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR Parts 1.61-1 Through 1.281-4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 1.441-1 Through 1.483-2

Income taxes, Accounting, Deferred compensation plans.

26 CFR Part 602

Reporting and recordkeeping requirements.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86-15617 Filed 7-9-86; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-91006; FRL-2998-6]

Toluenediamines; Termination of Investigation Concerned With Occupational Exposure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Termination of EPA's Investigation of Occupational Exposure to Toluenediamines (TDAs).

SUMMARY: This notice announces the termination of EPA's investigation of potential risks arising from occupational exposure to toluenediamines. In accordance with section 9(d) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2608(d), EPA is transmitting to the Department of Labor's Occupational Safety and Health Administration (OSHA) EPA's public record pertaining to this issue. EPA will continue to investigate the environmental hazards posed by TDAs in non-occupational settings, such as those arising from the release of TDAs outside of workplaces, under section 4 of TSCA.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Toll-Free: (800-424-9065), In Washington, DC: (544-1404), Outside the USA: (Operator—554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

EPA issued in the Federal Register of January 8, 1982 (47 FR 973) an Advance Notice of Proposed Rulemaking (ANPR) which responded to an Interagency Testing Committee Priority Testing Recommendation concerning some phenylenediamines and their derivatives. The notice announced that EPA was considering, based on information that human exposure to these substances was occurring in the workplace and environment, establishing biological effects testing requirements under section 4(a) of TSCA covering 13 phenylenediamines and certain derivatives, including the 2,3-, 2,4-, 2,5-, 2,6-, 3,4- and 3,5-diaminotoluene isomers and their salts. In that notice, EPA also announced plans to obtain commercial and exposure data concerning 34 other phenylenediamines or their derivatives by issuing reporting rules under the authority of sections 5 and 8 of TSCA. EPA issued its decision not to require testing for the 34 phenylenediamines in the Federal Register of January 30, 1985 (50 FR 4267).

Bioassays conducted under the National Toxicology Program have demonstrated that 2,4-toluenediamine causes cancer in laboratory animals. This evidence, combined with positive short-term mutagenicity testing results and the close structural similarity that 2,4-toluenediamine has with other substituted *meta*-phenylenediamines which have been found to cause cancer in long-term bioassays involving laboratory animals, suggests that 2,4-toluenediamine would meet the criteria for classification as a probable human carcinogen under EPA's proposed Cancer Risk Assessment Guidelines that were published in the Federal Register of November 23, 1984 (49 FR 46294).

Although no isomer of TDA other than 2,4-TDA has been shown to cause cancer in laboratory animals, the structural similarity with carcinogenic *ortho*-phenylenediamines suggests that the *ortho*-isomers of TDA—2,3-TDA and 3,4-TDA—would probably be carcinogenic if tested in animals.

After issuing the ANPR, EPA considered requiring carcinogenicity testing (2-year bioassays) under section 4(a) of TSCA for some of the untested TDAs. EPA's concern was that, although manufacturers may be controlling exposures to all TDAs, there was no similar assurance concerning processors and users.

About 750 workers are potentially exposed to TDAs during their manufacture. Most TDAs are used in the manufacture of toluene diisocyanate (TDI), a process that causes little or no exposure to TDAs. Somewhat fewer than 750 additional workers are exposed during other use and processing of TDAs other than in manufacture of TDI.

In November 1983, the toluenediamine category was considered by EPA for negotiated rulemaking under TSCA. In proposing such negotiations, EPA expected that, if the parties to such negotiations could agree to a comprehensive rule under TSCA that would limit all workplace exposure to TDA isomers to acceptable levels, EPA would not issue a testing rule under section 4(a) of TSCA requiring that bioassays be conducted on these isomers. A comprehensive control rule, based on manufacturers' concession of probable risk, would have averted the need for expensive long-term carcinogenicity testing on TDA isomers for which data did not exist. The project was terminated in March 1984 because the necessary parties did not all agree to participate in the prospective negotiated rulemaking.

II. Conclusion

EPA has ended its investigation of exposure to TDAs in the workplace because the potential risks are, as a matter of policy, more appropriately addressed by OSHA. Should OSHA determine a need to govern occupational exposure to TDAs, that Agency has statutory authority to prevent or reduce to a sufficient extent the risks associated with processing and use of the substances in the workplace.

EPA and OSHA recently signed a memorandum of understanding which recognizes the responsibilities of each agency regarding the regulation of toxic substances posing risks in the workplace and specifies how the agencies will coordinate certain of their activities and handle referral of occupational chemical risks from EPA to OSHA under section 9 of TSCA.

In order to assist OSHA in its deliberations, and in accordance with section 9(d) of TSCA, 15 U.S.C. 2608(d), EPA is transmitting a copy of its public record to OSHA, including data collected pursuant to the section 4(a) test rule. EPA is prepared to provide technical support to OSHA. EPA has not made an unreasonable risk determination in the case of occupational exposure to TDAs. Therefore, the Agency is transferring its public record on this matter to OSHA under the principles of section 9(d) of TSCA, rather than submitting a report to OSHA under section 9(a).

EPA will continue to investigate exposure to TDAs arising from environmental release under section 4 of TSCA.

III. Public Record

EPA has established a public record for today's action under the docket number OPTS-91006. The record includes the following kinds of information:

(1) Federal Register notices pertaining to this action.

(2) Support references prepared before and after issuance of the ANPR.

(3) Written communications.

(4) Telephone communications.

(5) Notes of informal meetings.

This record is available for inspection in the Office of Toxic Substances Reading Room, Rm. E-107, 401 M St., SW., Washington, DC, Monday through Friday from 8 a.m. to 4 p.m., excluding legal holidays.

Dated: June 30, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-15551 Filed 7-9-86; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 51, No. 132
Thursday, July 10, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Agricultural Stabilization and Conservation Service

Wool Advertising and Promotion

AGENCIES: Agricultural Stabilization and Conservation Service and Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: The purpose of this notice is to announce that a referendum will be conducted on August 18–29, 1986, among wool producers to determine if such producers are in favor of a proposed agreement between the American Sheep Producers Council, Inc. (ASPC) and the United States Department of Agriculture with respect to advertising and sales promotion programs. Under the proposed agreement, the Department would make deductions for the 1986 through 1990 marketing years from price support payments which are made to wool producers for shorn wool and unshorn lambs under the National Wool Act of 1954, as amended (hereinafter referred to as the "Act"). The amounts so deducted would be used by the ASPC for advertising and sales promotion programs and for programs pertaining to the dissemination of information concerning wool, sheep, or the products thereof.

EFFECTIVE DATE: July 10, 1986.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Telephone (202) 447–5621.

SUPPLEMENTAL INFORMATION: This notice of referendum has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." It has been determined that this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this notice applies are: National Wool Act Payments; 10.059 as found in the Catalog of Federal Domestic Assistance.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 28115 (June 24, 1983).

Section 708 of the Act authorizes the Secretary of Agriculture to enter into agreements with, or to approve agreements entered into between, marketing cooperatives, trade associations, or others engaged in the handling of wool, mohair, sheep, or goats or the products thereof for the purpose of developing and conducting advertising and sales promotion programs and programs for the development and dissemination of information on product quality, production management, and marketing improvement of wool, mohair, sheep, or goats or their products. These activities are administered for the Secretary by the Agricultural Marketing Service (AMS) of the Department of Agriculture. In order to defray the expenses for carrying out these activities, the agreements may provide for deductions to be made from price support payments which are paid to producers under this Act. However, as required by section 708 of the Act, no agreement providing for any such deduction shall become effective unless the agreement is approved in a referendum by at least two-thirds of the producers voting or by producers with at least two-thirds of the volume of production represented in the referendum.

Since 1954, there have been eight agreements for advertising and sales promotion activities between the Secretary of Agriculture and the ASPC for the marketing years 1955 through 1985. Each of these agreements become effective following approval by producers in a referendum. The last of such agreements, which was approved by 72.6 percent of the producers voting in the 1982 referendum was effective for the 1982–85 marketing years. It is proposed that a new agreement be entered into between the Secretary and the ASPC for the 1986–1990 marketing years. The proposed agreement will be similar to the most recent agreement dated January 26, 1983, except that the maximum amount which can be deducted from price support payments make to wool producers for shorn wool and unshorn lambs for any of the marketing years is being increased from 4 cents to 6 cents per pound of shorn wool and from 20 cents to 30 cents per hundredweight for unshorn lambs marketed.

The purpose of this notice is only to announce the period when the referendum will be conducted and certain eligibility requirements for producers to participate in such referendum in accordance with 7 CFR Part 1270.

Notice of Referendum

1. *Period of Wool Referendum for the 1986, 1987, 1988, 1989, and 1990 marketing years.* In accordance with Section 708 of the National Wool Act of 1954, as amended, the Secretary of Agriculture will conduct a referendum among wool producers to determine whether they approve of the proposed agreement between the American Sheep Producers Council, Inc., and the Agricultural Marketing Service regarding advertising and sales promotion programs for wool, sheep, or the products thereof. The referendum will be conducted in accordance with the provisions of 7 CFR Part 1270 during the period August 18–29, 1986, inclusive. Voting will be conducted through county offices of the Agricultural Stabilization and Conservation Service (ASCS) of the U.S. Department of Agriculture. Copies

of the proposed agreement are available at ASCS county offices and will be mailed to individual producers.

2. *Eligibility requirements to participate in the Referendum.* Only those producers who owned sheep (6 months old or older) in the United States for at lest 30 consecutive days during 1985 are eligible to vote.

Authority: Sec. 708, 68 Stat. 912, as amended (7 U.S.C. 1787).

Signed at Washington, DC on July 3, 1986.

Milton J. Hertz,

Acting Administrator, Agricultural Stabilization and Conservation Service.

William T. Manley,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 86-15532 Filed 7-9-86; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

A Report on Minimum Management Requirements for Forest Planning on the National Forests of the Pacific Northwest Region; Notice of Availability

The Pacific Northwest Region of the Forest Service, Department of Agriculture, has completed a Report on Minimum Management Requirements for Forest Planning on the National Forests in the Region. This Report was prepared in response to a request by Deputy Assistant Secretary Douglas MacCleery, in a March 8, decision on an administrative appeal of the Pacific Northwest Region Regional Guide, that the Forest Service review the Region's Minimum Management Requirements.

Minimum Management Requirements for Forest Planning establish standards, based upon Forest Service Interpretation of laws and regulations, that must be met when National Forest land is managed under Forest Plans developed pursuant to the National Forest Management Act of 1976 and its implementing regulations. The Report that is now being made available documents the current review that was made of the Region's Minimum Management Requirements policy as a result of the Deputy Assistant Secretary's request, and indicates changes that will be made in that policy.

Requests for a copy of the Report should be made to Allan O. Lampi, Director of Planning, USDA Forest Service, Pacific Northwest Region, P.O. Box 3623, Portland, OR 97208.

Dated: June 30, 1986.

James F. Torrence,

Regional Forester.

[FR Doc. 86-15510 Filed 7-9-86; 8:45 am]

BILLING CODE 3410-11-M

San Bernardino National Forest

AGENCY: Forest Service, USDA.

ACTION: Extension of public comment period.

The public comment period for the draft San Bernardino National Forest Land and Resource Management Plan and draft environmental impact statement has been extended to 120 days (April 25, 1986, 51 FR 15686). Written comment on the drafts must be postmarked no later than midnight, August 24, 1986. Responses should be mailed to: Land Management Planning, P.O. Box 254, San Bernardino CA 92402. For further information, contact Gay L. Almquist, Land Management Planning Officer, 714-383-5588.

Richard L. Stauber,

Forest Supervisor.

[FR Doc. 86-15435 Filed 7-9-86; 8:45 am]

BILLING CODE 3410-11-M

Proposed Fee Schedule for Electronic Communication Sites

SUMMARY: The Pacific Northwest Region, administering those National Forests with headquarters in the States of Oregon and Washington, is revising procedures governing determination of rental fees for communication sites. A rental fee schedule has been prepared and is available for review and comments.

SUPPLEMENTARY INFORMATION: The Forest Service administers approximately 500 communication site authorizations in Oregon and Washington. The previous policy for determining annual land use rental fees was a type of schedule or formula. Fees were based on 0.2 percent of the authorization holder's total investment value for communication facilities and equipment plus 5 percent of the rental income from building tenants and/or equipment users served by the holder. Fees for many holders are currently at levels of $30 to $100/year while private land rentals are more in the $500 to 2,000/year range.

Revised policy contained in **Federal Register** Vol. 50—Page 40574, dated October 4, 1985, established that fees are now to be based on market evidence and other sound business management principles rather than on a percentage of investment value and rental income.

Future fees are to be determined by individual appraisal, competitive bidding, or a fee schedule. The Pacific Northwest Region has determined a fee schedule would be an appropriate method to be used for many sites in Oregon and Washington. Individual sites appraisals or competitive bidding will be used to establish fees on some large or unique sites or where a competitive interest exists.

A rental fee schedule has been prepared based on analysis of a market study of similar uses in Oregon and Washington and sound business management principles. The schedule would establish annual rental fees by type and intensity of use for areas or zones of similar value. It would be updated by new market studies and analysis at 5-year intervals.

These fees would be applicable in authorizations issued after review of public comments and publication of a final notice in the Federal Register. During the interim, fees in existing authorization will be continued unchanged. Fees in new authorizations will be established by negotiation using the proposed schedule as a basis, unless appraisal or competitive bidding is more appropriate. Copies of the schedule are being mailed to holders of existing communication site authorizations and will also be sent to anyone requesting copies from the contracts listed in this notice. The schedule is also available for review at the Regional Offices and Forest Supervisors' Office in Oregon and Washington.

DATES: Comments on the proposal must be received, in writing, on or before September 20, 1986.

ADDRESSES: Send comments on the proposal to James F. Torrence, Regional Forester, Pacific Northwest Region, Forest Service, USDA, Box 3623, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Walt Bennett at (503) 221-2921.

Dated: July 3, 1986.

James C. Space,

Acting Regional Forester.

[FR Doc. 86-15511 Filed 7-9-86; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

North Fork of Ozan Creek Watershed, Arkansas

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102 (2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the North Fork of Ozan Creek Watershed, Hempstead, Howard, and Pike Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: Jack C. Davis, State Conservationist, Soil Conservation Service, 2405 Federal Office Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, telephone (501) 378–5678.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Jack C. Davis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood prevention and watershed protection. A portion of the project, including all land treatment and five single purpose floodwater retarding structures, has been completed. National Environmental Policy Act requirements for these completed measures have been fulfilled. The planned works of improvement remaining to be installed include three single purpose floodwater retarding structures and selective snagging on 12.1 miles of channel.

The Notice of a Finding of No Significant Impact (FNSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contracting Jack C. Davis, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance, Order No. 10–904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: June 26, 1986.

Jack C. Davis,

State Conservationist, Soil Conservation Service, Arkansas.

[FR Doc. 86–15512 Filed 7–9–86; 8:45 am]

BILLING CODE 3410–16–M

Opequon Creek Watershed, West Virginia and Virginia; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Opequon Creek Watershed, Berkeley and Jefferson Counties, West Virginia and Frederick and Clarke Counties, Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia 26505, Telephone: 304–291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for enhancement of water quality. The planned works of improvement include the installation of animal waste management systems on 34 farms in the watershed problem area.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, West Virginia.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10–904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

July 2, 1986.

Paul S. Dunn,

Assistant State Conservationist.

[FR Doc. 86–15513 Filed 7–9–86; 8:45 am]

BILLING CODE 3410–16–M

ARCTIC RESEARCH COMMISSION

Meeting

Notice is hereby given that the Arctic Research Commission will meet on 23 July 1986. The meeting will be held in the Board Room, Bovard Administration Building, University of Southern California, University Park, Los Angeles, California starting at 8:30 a.m. Matters to be considered include: 1. Chairman's items, 2. Approval of Report of Commission Meeting, 28–29 April 1986, 3. Comments from Interagency Arctic Research Policy Committee, 4. Status of Development of the 5-year Arctic Research Plan and Public Review Workshop, 5. FY–87 Federal Budget for Arctic Research, 6. Arctic Health Activities, 7. Federal/State Cooperation in Arctic Research, 8. Mechanisms for International Cooperation in Arctic Research, 9. Logistic Requirements to Support Arctic Research—Land and Ocean Systems, 10. U.S. Polar Research Institute, 11. Schedule and Agenda for September 8–9. Meeting in Washington, DC.

The Commission will meet in Executive Session on 23 July 1986 from 4:00–5:00 p.m. to consider (1) Future Activities of the Commission, and (2) Commission Budgetary Matters.

Contact Person for More Information: W. Timothy Hushen, Executive Director, Arctic Research Commission, (213) 743–0970.

W. Timothy Hushen,

Executive Director, Arctic Research Commission.

[FR Doc. 86–15565 Filed 7–9–86; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 22-86]

Foreign-Trade Zone 82—Mobile, AL; Application for Subzone ADDSCO Shipyard, Mobile

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Mobile, Alabama, grantee of FTZ 82, requesting special-purpose subzone status for the shipyard of ADDSCO Industries, Inc., in Mobile, Alabama, within the Mobile Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 20, 1986.

The shipyard covers 215 acres on Pinto Island in the Mobile River, Mobile. The facility is used for construction, conversion and repair of commercial and military vessels and offshore oil and gas platforms, employing some 3000 persons. Foreign components used by the company include diesel engines, gears, desk fittings, anchors, chain, desk machinery, windows, doors, life boats, and ventilation and air conditioning equipment. This equipment accounts for up to 32 percent of vessel value on new construction and ranges from 5 to 15 percent on repair activity.

Zone procedures will help ADDSCO reduce costs on its current orders and compete internationally for new contracts. Most of the imported components are subject to significant duties while the finished products, as oceangoing vessels, are duty-free.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; David Willette, Acting District Director, U.S. Customs Service, South Central Region, P.O. Box 2749, Mobile, AL 36652; and, Colonel Carroll H. Dunn, Jr., District Engineer, U.S. Army Engineer District Mobile, P.O. Box 2288, Mobile, AL 36628.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before August 7, 1986.

A copy of the application is available for public inspection at each of the following locations:

District Director's Office, U.S. Customs Service, 250 N. Water Street, P.O. Box 2748, Mobile, AL 36652

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Ave. NW., Washington, DC 20230.

Dated: July 1, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-15589 Filed 7-9-86; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 333]

Resolution and Order Approving the Application of the South Carolina State Ports Authority for a Foreign-Trade Zone in West Columbia, SC

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the South Carolina State Ports Authority, filed with the Foreign-Trade Zones Board (the Board) on July 23, 1985, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in West Columbia, South Carolina, within the Columbia Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant

To Establish, Operate, and Maintain a Foreign-Trade Zone in West Columbia, SC

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended 19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the South Carolina State Ports Authority (the Grantee) has made application (filed July 23, 1985, Docket No. 25–85, 50 FR 31757) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in West Columbia, South Carolina, within the Columbia Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 127 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any

manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC this 2nd day of July 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 86-15590 Filed 7-9-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Barnett Institute/Northeastern University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-059. Applicant: Barnett Institute/Northeastern University, Boston, MA 02115. Instrument: High Resolution Mass Spectrometry System, Model MM70-250S with Accessories. Manufacturer: VG Anlytical Limited, United Kingdom. Intended use: See notice at 51 FR 666.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) a moving belt interface for liquid chromatography, (2) resolution to 40,000, (3) a mass range from 1 to 2670 atomic mass units, at an accelerating potential of 6000 volts, and (4) FAB. The National Institutes of Health advises in its memorandum dated May 15, 1986 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Program Staff.

[FR Doc. 86-15598 Filed 7-9-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-017]

Bricks From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on bricks from Mexico. The review covers the period February 16, 1984 through June 30, 1984 and fifteen programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant to be zero for two firms and 11.75 percent *ad valorem* for all other firms. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 10, 1986.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Bernard Carreau, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 19564) a final affirmative countervailing duty determination and countervailing duty order on bricks from Mexico. We began the current administrative review under our old regulations on August 7, 1984 and sent a questionnaire to the Mexican government on that day. After the promulgation of our new regulations, the petitioner, two exporters, and the Mexican government, on October 15, 1985, November 5, 1985, and November 15, 1985, respectively, requested an administrative review of the order, in accordance with § 355.10(a) of the Commerce Regulations. We published the new initiation on November 27, 1985 (50 FR 48825). The Department has now conducted that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Mexican bricks. Such merchandise is currently classifiable under items 532.1120 and 532.1140 of the Tariff Schedules of the United States Annotated. These products include unglazed solid bricks and unglazed hollow bricks.

Three firms were excluded from the scope of the order and therefore are not covered by this review: Jesus Garza Arocha, S.A.; Arcillas Saltillo, S.A.; and Ceramica Santa Julia, S.A.

The review covers the period February 16, 1984 through June 30, 1984, and fifteen programs: (1) CEDI; (2) FOMEX; (3) CEPROFI; (4) FOGAIN; (5) FONEI; (6) state tax incentives; (7) import duty reductions and exemptions; (8) NDP preferential discounts; (9) Article 94 of the Banking Law; (10) preferential vessel and freight rates; (11) FIDEIN; (12) FOMIN; (13) export services offered by IMCE; (14) accelerated depreciation allowances; and (15) FONEP.

Analysis of Programs

The Mexican government's questionnaire response, submitted on October 17, 1984, covered nine exporters of bricks to the United States. At verification, we found this response to be deficient in four particularly significant ways. First, one of the six firms that we verified had mistakenly denominated its peso figure exports in terms of U.S. dollars, which inflated the total value of brick exports covered by the response. Correction of this error brought the total coverage to approximately 13 percent of total Mexican brick imports into the United States for the review period. (We based our estimate on U.S. Census figures because the Mexican government did not provide the actual value for Mexican brick exports to the United States.) Second, one of three verified firms reporting subsidy information was unable at verification to demonstrate the

accuracy of its response. Third, one of three verified firms claiming to have received no benefits did in fact receive FOMEX pre-export loans during the review period. Finally, another verified firm, unilaterally certified by the Mexican government as having received no benefits, did in fact have FOGAIN long-term loan balances outstanding during the review period.

On April 16, 1985, we sent a letter to the Mexican government requesting information from additional exporters. We also requested official Mexican export statistics ("IMCE" statistics) for the period of review showing exports of bricks by each firm.

On May 14, 1985, we received the supplemental response, which covered six additional exporters. We did not, however, receive the requested IMCE export statistics. We did receive on that date a value for Mexican brick exports to the United States during the period of review. However, that value is at considerable variance with U.S. import statistics. On July 29, 1985, we received IMCE statistics for brick and tile exports covering an earlier period than the review period. The Mexican government deleted the names of the companies from those IMCE statistics.

Even with the six additional firms, we found the responses to our questionnaire and supplemental request for information to be inadequate. The total value of exports in the responses for all 15 firms covered only 41 percent of imports of Mexican bricks during the period. (Again, without the IMCE export statistics, we do not know the actual value of brick exports to the United States.) Further, if we ignore the exports of the two firms verified to have received no benefits and of the one excluded firm erroneously included in the Mexican government response for the review period, the sample for firms receiving benefits comprises only 38 percent of the remaining imports. A related problem is that the responses covered only 15 exporters out of a universe of well over 60 exporters to the United States. Once again, if we segregate the two zero benefit firms and the excluded firm, our sample for the more than 57 remaining firms would be only 12. Finally, our verification showed that, even for the firms for which the government reported subsidies, the information was incomplete.

Because the questionnaire responses are inadequate, we have proceeded using the best information otherwise available. As best information, we are using positive rates found for each program in a final determination in an investigation or final results of administrative review for any Mexican product during a contemporaneous period. If there is more than one rate for a contemporaneous period, we are using the highest rate. If there is no positive rate for a contemporaneous period, we are using the rate for the closest period available with a positive rate. On this basis, the rate for each program is:

	Percent ad valorem
(1) Rebate Certificates ("CEDI")	0.00
(2)(a) Fund for the Promotion of Mexican Manufactured Products ("FOMEX") pre-export loans	1.36
(2)(b) FOMEX export loans	3.70
(3) Certificates for Fiscal Promotion ("CEPROFI")	4.25
(4) Guarantee and Development Fund for Medium and Small Industries ("FOGAIN")	0.70
(5) Fund for Industrial Development ("FONEI")	1.25
(6) State tax incentives	0.04
(7) Import duty reductions and exemptions	0.07
(8) National Development Plan ("NDP") discounts	0.25
(9) Article 94 of the General Law of Credit Institutions and Auxiliary Organizations	0.13

The Department has never found the following programs covered by the current review to constitute or provide a benefit in any Mexican case. Further, petitioners have not provided information on the amount of alleged benefits from these programs. Therefore, we find that the following programs do not provide a benefit in this review period.

(A) Preferential vessel and freight rates
(B) Trust for Industrial Parks, Cities, and Commercial Centers ("FIDEIN")
(C) National Industrial Development Fund ("FOMIN")
(D) Export services offered by the Mexican Institute of Foreign Commerce ("IMCE")
(E) Accelerated Depreciation Allowance

The Department has found the following program not countervailable (*see* the final affirmative countervailing duty determination and countervailing duty order on oil country tubular goods from Mexico (49 FR 47054, November 30, 1984)):

(F) National Pre-investment Fund for Studies and Projects ("FONEP")

Firms Not Receiving Any Benefits

During this review, nine firms unilaterally submitted certificates stating that they had neither applied for nor received benefits under the nine countervailable programs that we examined during the period of review and would not do so in the future. The Mexican government unilaterally submitted a certificate stating that eight firms (including seven of the nine self-certificated) did not receive benefits during the period of review. The Department has adopted a practice of accepting zero rate certificates in only two cases. That practice has not been extended to this proceeding. (*See* our position to Comment 1 in the final results of administrative review of the countervailing duty order on portland hydraulic cement and cement clinker from Mexico (50 FR 51732, December 19, 1985).)

At the government level verification, we found that one of the eight government certified firms did in fact have FOGAIN benefits outstanding during the review period. Therefore, even if we were permitting a certification mechanism in this case, we could not accept the Mexican government certification for any firm. We also verified at the company level the responses for three self-certified firms. We verified that two of those firms did not receive benefits during the period of review, but the third firm did receive FOMEX pre-export loans. We therefore will apply a zero rate, based on verification, to the two firms verified as having received no benefits: Ladrillera Industrial, S.A. and Tex Mex de Mexico, S.A.

Preliminary Results of Review

As a result of our review, we preliminary determine the bounty or grant to be zero for the two verified firms listed above and 11.75 percent *ad valorem* for all other firms.

The Department intends to instruct the Customs Service to assess no countervailing duties on shipments of this merchandise from the two verified firms listed above and countervailing duties of 11.75 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after February 16, 1984 and exported on or before June 30, 1984.

The Department intends to instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the two verified firms listed above and to collect 11.75 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

On May 3, 1985, May 16, 1985, and August 19, 1985, the respondents requested that we revoke this order based on the "Understanding Between the United States and Mexico Regarding Subsidies and Countervailing Duties," signed on April 23, 1985. On July 2, 1985,

September 23, 1985, and September 27, 1985, we received letters from the petitioner and interested parties opposing this revocation request. We preliminarily determine that this request for revocation is not justified. (See the final results of administrative review of the countervailing duty order on portland hydraulic cement and cement clinker from Mexico (50 FR 51732, December 19, 1985) and the final results of the countervailing duty administrative review on certain iron-metal construction castings from Mexico (51 FR 9698, March 20, 1986).)

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 55 days after the date of publication or the last workday preceding. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10; 50 FR 32556, August 13, 1985).

Dated: July 3, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-15593 Filed 7-9-86; 8:45 am]

BILLING CODE 3510-DS-M

Bryn Mawr College; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 83-285. Applicant: Bryn Mawr College, Bryn Mawr, PA 19010. Instrument: Nuclear Magnetic Resonance Continuous Wave Spectrometer, MO-100 with Accessories. Manufacturer: Spin-Lock Ltd., Canada. Intended use: See notice at 48 FR 39973.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a variable temperature range of −196 to +100 °C and operates in the 8.5 to 53.0 MHz frequency range. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Education and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-15599 Filed 7-9-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-505]

Certain Small Diameter Welded Carbon Steel Pipes and Tubes From the People's Republic of China; Final Determination of Sales at Less than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain small diameter welded carbon steel pipes and tubes (pipes and tubes) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination and the ITC will determine within 45 days of publication of this notice whether these imports are materially injuring or threatening material injury to a United States industry. We have directed the U.S. Customs Service to continue to suspend liquidation on all entries of the subject merchandise as directed in the "Suspension of Liquidation" section of this notice and to require a cash deposit or posting of a bond for each such entry in amounts equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: July 10, 1986.

FOR FURTHER INFORMATION CONTACT: Jess M. Bratton or Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230: telephone (202) 377-3963 or 377-5288.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we have determined that pipes and tubes from the PRC are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average margin of sales at less than fair value is listed in the "Suspension of Liquidation" section of this notice.

Case History

On November 13, 1985, we received a petition filed in proper form from the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports and by each of the member companies which produces standard pipe and tube on behalf of the U.S. industry producing pipes and tubes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on December 3, 1985 (50 FR 51274), and notified the ITC of our action.

On December 30, 1985, the ITC found that there is a reasonable indication that imports of pipes and tubes from the PRC are threatening material injury to a U.S. industry (USITC Pub. No. 1796, December, 1985).

On January 16, 1986, a questionnaire was sent to the China National Metals and Minerals Import and Export Corporation (Minmetals), which accounted for all known exports of standard pipe and tube from the PRC during the period of investigation.

On February 21, 1986, Minmetals filed a response to our questionnaire. Minmetals submitted a supplemental response on April 9, 1986. On April 22, 1986, we made an affirmative preliminary determination that pipes and tubes from the PRC are being, or are likely to be, sold in the United States at less than fair value (51 FR 15938).

We verified the respondent's questionnaire response on May 19 through May 23, 1986.

We conducted a public hearing on June 6, 1986.

As discussed under the "Foreign Market Value" section of this notice, we have determined that the PRC is a state-controlled-economy country for the purpose of this investigation.

Scope of Investigation

The products covered by this investigation are small diameter welded carbon steel pipes and tubes of circular cross-section, 0.375 inch or more but not over 16 inches in outside diameter, currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA), under items 610.3231 and 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925. These products are commonly referred to in the industry as standard pipes or tubes produced to various ASTM specifications, most notably A–120, A–53 and A–135.

Because Minmetals accounted for all exports of this merchandise to the United States, we limited our investigation to that firm. We investigated all sales of pipes and tubes for the period January 1, 1985 through November 31, 1985.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

We used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price of pipes and tubes, as provided in section 772 of the Act, on the basis of the C&F packed price, with deductions for foreign inland freight and ocean freight. We used an inland freight rate from Argentina as a free-market substitute for the yuan-denominated inland freight rate.

Foreign Market Value

In accordance with section 773(c) of the Act, we used prices of pipes and tubes imported into the United States from Argentina as the basis for determining foreign market value.

Petitioners alleged that the PRC is a state-controlled-economy country and that sales of the subject merchandise in that country do not permit a determination of foreign market value under section 773(a). After an analysis of the PRC economy, and consideration of the briefs submitted by the parties, we concluded that the PRC is a state-controlled-economy country for the purpose of this investigation. Central to our decision on this issue is the fact that the central government of the PRC controls the prices and levels of production of pipes and tubes or steel products as well as the internal pricing of the factors of production.

As a result, section 773(c) of the Act requires us to use either the prices or the constructed value of such or similar merchandise in a non-state-controlled-economy country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a non-state-controlled-economy country at a stage of economic development comparable to the state-controlled-economy country.

After an analysis of the economies of countries producing standard pipe and tube, we determined that Egypt, India, Indonesia, Morocco, Pakistan, the Philippines, Sir Lanka and Thailand were the countries at the most comparable stages of economic development, and it would, therefore, be appropriate to base foreign market value on prices of companies in these countries. Of those companies which were sent questionnaires, only one response was received. However, that response was considered unsuitable for the purpose of our final determination.

Lacking home market price or cost information from companies in countries at a level of economic development comparable to that of the PRC, we have based foreign market value on the prices of imports of the same class or kind of merchandise into the United States. Of the countries exporting pipe and tube to the United States, we chose Argentina since, of these exporting countries, it was at the most comparable level of economic development to the PRC. We have based foreign market value on the weighted-average C&F price of pipe and tube from Argentina for export to unrelated purchasers in the United States. We gathered weighted-average price information from Special Steel Invoice (SSSI) statistics, and make deductions for ocean freight and foreign inland freight. We made an addition to this price in the amount of export subsidies found in the countervailing duty investigation of oil country tubular goods from Argentina (49 FR 46564) since the possibility exists that pipes and tubes from Argentina benefit from the same subsidies. We made comparisons of merchandise of the same size and grade as that which the PRC exported to the United States.

In arriving at the decision to use the price of Argentine exports to the United States as the basis of foreign market value, we considered using the exports of several other countries. None of these other countries provided nearly the same degree of product matches to the PRC's exports as did Argentina. Furthermore, these other countries were signatories of voluntary restraint agreements (VRAs) with the United States. Since under the terms of a VRA the amount of goods a country may export to the United States is limited, it is possible that these VRAs lead to an increase in the prices manufacturers in these countries charge. Therefore, we decided, for the purpose of this final determination, to base foreign market value on the value of goods from Argentina rather than from VRA countries.

Verification

In accordance with section 776(a) of the Act, we verified all the information submitted by the respondent used in making this determination. We were granted access to the books and records of the company. We used standard verification procedures including examination of accounting records and other selected documents containing relevant information.

Petitioner's Comments

Comment No. 1: Petitioners argue that Argentina is not an acceptable surrogate country because the ITA has determined that oil country tubular goods from Argentina are benefiting from export subsidies (49 FR 46564) and there is, therefore, a possibility that pipes and tubes benefit from the same subsidies.

DOC Position: As we stated recently in our final determination in the antidumping duty investigation of steel wire nails from the PRC (51 FR 10247), we would prefer not to use countries as surrogates where we have evidence that products from such countries may be benefiting from export subsidies. Nonetheless, for the purposes of this investigation we have decided that, despite the existence of export subsidy for oil country tubular goods in Argentina, that country is the most appropriate surrogate.

Of those countries that export pipes and tubes to the United States, Argentina is at the most comparable stage of economic development to the PRC. Argentina has exports of pipes and tubes which offer the greatest degree of product match to pipes and tubes from the PRC. We were able to find direct Argentine matches for each size, type and grade of pipes and tubes exported

from the PRC. In addition, the export subsidy in the investigation of oil country tubular goods from Argentina was small, less than one percent. All of the other possible surrogates are subject to VRAs. Since under the terms of a VRA the amount of goods a country may export to the United States is limited, it is possible that VRAs lead to an increase in the prices manufacturers in these countries charge. For this reason, we prefer not to use VRA countries as surrogates, where, as in this case, there is a more suitable option.

Thus, we have determined that, notwithstanding our usual reluctance to use as surrogates countries that offer export subsidies, it is appropriate to use Argentina in this case. We have also determined that it is appropriate to adjust the price of the pipes and tubes from Argentina to offset the effect of any possible export subsidy.

Comment No. 2: Petitioners argue that India should be used as the surrogate country since the antidumping duty order to which imports into the United States of pipes and tubes from India are subject does not invalidate the use of India's home market prices. Petitioners also suggest that the price list of India's Joint Planning Committee should be used in determining these home market prices.

DOC Position: We followed our usual procedures for obtaining the names of companies in the countries we were considering as surrogates. For India, each of those companies was a respondent in the recently completed investigation of pipes and tubes from India. We were led to understand that it was extremely unlikely, given that investigation, that cooperation would be forthcoming in such an investigation of the same products from China.

We then considered petitioners' proposition that we use a price list put out by India's Joint Planning Committee to determine home market prices, which petitioners maintained did not have to be verified. We found this option unsuitable. We have no evidence of any uniformity of prices in India notwithstanding the existence of such a list. In our investigation of pipes and tubes from India, there was no evidence of any adherence to standard prices. We therefore could not consider such prices representative of actual Indian home market prices.

Considering the above constraints we found India to be an unsuitable choice as a surrogate.

Comment No. 3: Petitioners maintain that the Department should not make adjustments for physical differences in merchandise for either the rusted black pipe or the deficiencies in the zinc coating applied to the galvanized pipe. The petitioners argue that the adjustment should be denied because the pipes and tubes were invoiced as conforming to ASTM–120 specifications and Minmetals has made no reimbursement for claims submitted by the importer for merchandise deficiencies.

DOC Position: We agree (see DOC Position in response to Respondent's Comment No. 1).

Respondent's Comments

Comment No. 1: The respondent argues that the Department should adjust the price of galvanized pipe for the cost or regalvanization in order to account for the phyical differences in the pipes imported during the period of investigation from the PRC, and those imported from Argentina. The respondent maintains that, notwithstanding the merchandise description on the invoice, the price charged reflects a risk that the pipes and tubes would not meet specifications. Therefore, they argue that adjustments for physical differences are required regardless of whether Minmetals reimbursed the importer.

DOC Position: We verified that both the sales contract and the invoice described the merchandise as conforming to ASTM–120 specifications. We cannot adjust for unquantifiable and unsupported "risk factors." Since no reimbursement was made by Minmetals to the importer, an adjustment in price is inappropriate.

Comment No. 2: The respondent argues that the Department should terminate its investigation of the black pipe on the grounds that, having been sold by the importer as scrap because of its rusted condition, it is outside the scope of investigation.

DOC Position: The Department disagrees for the same reasons as offered in the DOC Position in response to Respondent's Comment No. 1.

Comment No. 3: The respondent argues the Department should use Argentine imports for foreign market value, as was done at the preliminary determination.

DOC Position: We agree (see DOC Position in response to Petitioners' Comment No. 1).

Continuation of Suspension of Liquidation

In accordance with section 733(b) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of pipes and tubes from the PRC entered, or withdrawn from warehouse, for consumption on or after April 29, 1986. The United States Customs Service will require the posting of a cash deposit, bond, or other security in amounts based on the following weighted-average margin.

Company	Weighted-average margin (percent)
All producers, manufacturers and exporters	30.00

ITC Notification

Pursuant to section 733(f) of the Act, we will notify the ITC and make available to it all non-privileged and non-confidential information relating to this determination. We will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not discuss such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the date of this determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumpting duty order directing Customs officers to assess an antidumping duty on pipes and tubes from the PRC that are entered, or withdrawn from warehouse for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value exceeds the United State price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

July 7, 1986.

[FR Doc. 86–15592 Filed 7–9–86; 8:45 am]

BILLING CODE 3510-DS-M

[Docket Nos. 4656–01, 4656–02, 4656–03, 4656–04, 4656–05, 4656–06, 4656–07, 4656–08]

Export Privileges; Josef Kubicek et al.

In the Matter of: Josef Kubicek, individually and doing business as Exclusitrade, Inc. and J.O.K., Inc.; William Carlton Dart, individually and doing business as Display Systems, Inc. and Perpetuum, Inc.; Robert William Haire, Sr., individually and doing

business as Display Systems, Inc. and Exclusitrade, Inc.; and Raymond Shields Spitz.

Order

On June 3, 1986, the Administrative Law Judge issued his Decision and Order in the Matter of Josef Kubicek, individually and doing business as Exclusitrade, Inc. and J.O.K., Inc.; William Carlton Dart, individually and doing business as Display Systems, Inc. and Perpetuum, Inc.; Robert William Haire, Sr., individually and doing business as Display Systems, Inc. and Perpetuum, Inc.; and Raymond Shields Spitz which was referred to me pursuant to Section 13(c) of the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Act Amendments of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) and 15 CFR 388.8(a) for final action.

Between June 1983 and February 1984, Josef Kubicek and William Dart conspired and attempted to export two wafer polishers that were modified to have the equivalent capabilities of advanced model wafer polishers thereby making the polishers subject to the licensing requirements. Respondents Kubicek and Dart did so without the required validated export license, in violation of §§ 387.3(a) and 387.3(b) of the Export Administration Regulations. Josef Kubicek and William Dart knew that a license was both required and had not been obtained in violation of § 387.4 of the Export Administration Regulations.

Having reviewed the record and based on the facts addressed in this case, I hereby modify the Order of the Administration Law Judge. Respondent Josef Kubicek, individually and doing business as Exclusitrade, Inc. and J.O.K., Inc. is hereby denied all export privileges and may not engage in or otherwise be involved in any export transaction for a period of 30 years from the date of this Order. A civil penalty in the amount of $300,000 is assessed against Kubicek. Kubicek shall pay to the U.S. Department of Commerce, within 20 days of service of this Order, the sum of $300,000.

Respondent William Carlton Dart, individually and doing business as Display Systems, Inc. and Perpetuum, Inc. is denied all export privileges and may not engage in or otherwise be involved in any export transaction for a period of 15 years from the date of this Order. A civil penalty in the amount of $150,000 is assessed against Dart. Dart shall pay to the U.S. Department of Commerce, within 20 days of service of this Order, the sum of $150,000.

The names and addresses of the respondents who are denied such export privileges are as follows:

Josef Kubicek, 2001 Artesia Boulevard, Redondo Beach, CA 90278.

Exclusitrade, Inc. with location at 18 La Vista Verde, Rancho Palos Verdes, CA 90274 and 2001 Artesia Boulevard, Redondo Beach, CA 90278 and Lakeside Office Park No. 4, Wakefield, Massachusetts 01880.

J.O.K., Inc. with locations at 18 La Vista Verde, Rancho Palos Verdes, CA 90274 and 2001 Artesia Boulevard, Redondo Beach, CA 90278 and Lakeside Office Park No. 4, Wakefield, Massachusetts 01880.

William Carlton Dart, 2000 Martin Avenue, Santa Clara, CA 95050

Display System, Inc., 2000 Martin Avenue, Santa Clara, CA 95050.

Perpetuum, Inc., 2000 Martin Avenue, Santa Clara, CA 95050

As to respondents Robert Haire, Sr. and Raymond Shields Spitz, I affirm the Order of the Administrative Law Judge dismissing the charges against them. Their names shall be deleted from the list of respondents in the November 6, 1984 temporary denial order.

This constitutes final agency action in this matter.

Dated: July 3, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86–15596 Filed 7–9–86; 8:45 am]

BILLING CODE 3510-DT-M

[Docket Nos. 1624–01, 1624–02, 1624–03, 1624–51, 1624–52, 1624–53.]

Export Privileges; Michael M. Winkler et al.

In the Matter of: Michael M. Winkler, Syscom U.S.A., Inc., Syscom Winkler, GmbH, Winkler Electronics, Winkler GmbH, Syscom GmbH.

Order

The Assistant Secretary's ORDER of June 30, 1986, published in the **Federal Register** on July 7, 1986 (51 FR 24569) is hereby amended by adding the following names to the list of denied parties already in the Order:

Winkler Electronics, Inc., 3409 Rose Avenue, Ocean, New Jersey 07712

Winkler GmbH, Truebner Strasse 40, 6900 Heidelberg, Federal Republic of Germany

Syscom GmbH, Truebner Strasse 40, 6900 Heidelberg, Federal Republic of Germany

Dated: July 7, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86–15597 Filed 7–9–86; 8:45 am]

BILLING CODE 3510-01-M

Emory University; Consolidated Decision on Applications for Duty-Free Entry of Mass Spectrometers

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86–054. Applicant: Emory University, Atlanta, GA 30322. Intended Use: See notice at 50 FR 52821.

Docket Number: 86–065. Applicant: Johns Hopkins University, Baltimore, MD 21218. Intended Use: See notice at 51 FR 3488.

Article: Mass Spectrometer, Model 7070S. Manufacturer: VG Analytical Instruments, Ltd., United Kingdom. Advice Submitted by: National Institutes of Health: May 10 and 15, 1986.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States.

Reasons: The foreign instruments provide: (1) A resolution to 40,000, (2) a mass range of at least 2600 at an accelerating potential of 6000 volts, (3) a scan speed to 0.1 seconds per decade and (4) an alternating FAB probe. The National Institutes of Health advises in its respectively cited memoranda that (1) these capabilities are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to the foreign instruments.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–15600 Filed 7–9–86; 8:45 am]

BILLING CODE 3510-DS-M

Michigan State University; Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86–057. Applicant: Michigan State University, East Lansing, MI 48824–1319. Instrument: Mass Spectrometer System, JMS–HX11OHF. Manfacturer: JOEL, Limited, Japan. Intended Use: see notice at 51 FR 238.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a mass range of 1 to 12 000 atomic mass units at an accelerating potential of 10 kilovolts and resolution up to 100 000 (10 percent valley). The National Institutes of Health advises in its memorandum dated May 10, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Program Staff.

[FR Doc. 86–15601 Filed 7–9–86; 8:45am]

BILLING CODE 3510–DS–M

New York University Medical Center; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86–060. Applicant: New York University Medical Center, New York, NY 10016. Instrument: Gas Chromatograph/Mass Spectrometer/Computer System, Model VG 7070SE. Manufacturer: VG Instruments, Inc., United Kingdom. Intended Use: See notice at 51 FR 666.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) resolution to 40 000 (2) a mass range to 3000 at an accelerating voltage potential of 6000 volts, and (3) FAB. The National Institutes of Health advises in its memorandum dated May 15, 1986 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–15602 Filed 7–9–86; 8:45 am]

BILLING CODE 3510–DS–M

University of Iowa; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86–063. Applicant: University of Iowa, Iowa City, IA 52242. Instrument: Mass Spectrometer, Model ZAB–HF with 11/250 Data System. Manufacturer: VG Instruments Group, United Kingdom. Intended Use: See notice at 51 FR 3488.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a guaranteed resolution of 75 000 in the FAB mode and a mass range from 1 to 3000 atomic mass units at an accelerating potential of 8000 volts. The National Institutes of Health advises in its memorandum dated May 15, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–15603 Filed 7–9–86; 8:45 am]

BILLING CODE 3510–DS–M

University of Michigan; Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86–082. Applicant: University of Michigan, Ann Arbor, MI 48109. Instrument: Mass Spectrometer, Model 70–250S. Manufacturer: VG Instruments, United Kingdom. Intended Use: See notice at 51 FR 3489.

Comments: None received.

Decision: Approved. No instrument of quivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) resolution to 40,000, (2) a mass range to 2670 at an accelerating potential of 6000 volts, and (3) FAB. The National Institutes of Health advises in its memorandum dated May 15, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory IMPORT Programs Staff.

[FR Doc. 86-15604 Filed 7-9-86; 8:45am]

BILLING CODE 3510-DS-M

University of Minnesota Hospital and Clinics; Applications For Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86-045R. Applicant: University of Minnesota Hospital and Clinics, 420 Delaware Street, SE., Minneapolis, MN 55455. Instrument: Extracorporeal Shock Wave Lithotripter and Accessories. Manufacturer: Dornier Systems GmbH, West Germany. Original Notice of this resubmitted application was published in the **Federal Register** of December 26, 1985.

Docket Number: 86-233. Applicant: Harvard University, Purchasing Department, 1350 Massachusetts Avenue, Cambridge, MA 02138. Instrument: Atmospheric Gas Analyzer. Manufacturer: Scintrex, Canada. Intended Use: The instrument is intended to be used to measure nitrogen dioxide concentrations in the air in a tropical forest, in order to learn about the chemistry of nitrogen dioxide in that environment. The work is intended to help understand the influence of tropical forests on the chemistry of the atmosphere. Application Received by Commissioner of Customs: June 6, 1986.

Docket Number: 86-236 Applicant: Columbus Children's Hospital, 700 Children's Drive, Columbus, OH 43205. Instrument: Electron Microscope, Model H-600-3. Manufacturer: Hitachi Scientific Instruments, Japan. Intended Use: The instrument will be used for morphological studies of human and animal tissues which include rat, mouse, dog, pig and monkey tissues, normal and diseased human tissues. The experiments to be conducted will include:

(1) Wound healing in and the efficacy of techniques used to effect intestinal transplants using rat intestine transplants, (2) study of neonatal colonic function, (3) studies of transepithelial needle biopsied human renal tissues and (4) determination of the presence of various pathogenic viruses in infants suffering from non-specific gastroenteritis. In addition, the instrument will be used to provide information concerning the fine structure of various human tissues and to provide training in pediatric pathology to medical residents. Application Received by Commissioner of Customs: June 12, 1986.

Docket Number: 86-237. Applicant: The Johns Hopkins University, Charles & 34th Streets, Baltimore, MD 21218. Instrument: Reflex Light Microscope with Accessories. Manufacturer: Reflex Measurement Ltd., United Kingdom. Intended Use: The instrument is intended to be used for studies of teeth of extinct and extant mammals; investigating the changes in shape that occur either as the teeth are worn down during life or as the teeth change through time in conjunction with the evolution of different species. Application Received by Commissioner of Customs: June 12, 1986.

Docket Number: 86-238. Applicant: Chemical Industry Institute of Toxicology, 6 Davis Drive, P.O. Box 12137, Research Triangle Park, NC 27709. Instrument: Gas Chromatograph/Mass Spectrometer System, Model MS 80. Manufacturer: Kratos Analytical, United Kingdom. Intended Use: The instrument is intended to be used in research to characterize the metabolism of the following chemicals and quantitate DNA adducts formed by selected compounds: industrial chemicals and their metabolites; nitroaromatic compounds, acrylonitrile, formaldehyde, butadiene, acrylamide, ethylene glycol ethers, gasoline-based hydrocarbons (2,2,4-trimethylpentane), and diethylnitrosamine. Since all of these chemicals are used in large quantities by industrial processes, this information should help in determining any toxicity which may be associated with exposure to the chemicals and hopefully allow a scientific evaluation of risk assessment to humans who may be exposed to the chemicals. Application Received by Commissioner of Customs: June 13, 1986.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-15605 Filed 7-9-86; 8:45 am]

BILLING CODE 3510-DS-M

The University of Mississippi Medical Center; Decision on Application for Duty-free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM In Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 86-051. Applicant: The University of Mississippi Medical Center, Jackson, MS 39216-4505. Instrument: Circular Dichroism Spectropolarimeter, Model J-500A. Manufacturer: Japan Spectroscopic Company, Limited, Japan. Intended use: See notice at 50 FR 52821.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (September 24, 1985). Reasons: The foreign instrument provides measurement of circular dichroism spectra and high frequency switching (50,000 times per second) between left- and right-circularly polarized light. The National Institutes of Health advises in its memorandum dated May 15, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to the foreign instrument being manufactured at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-15606 Filed 7-9-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-507-601]

Initiation of Countervailing Duty Investigation: Roasted In-Shell Pistachios From Iran

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether growers, processors and exporters in Iran of roasted pistachios, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. The Department intends to expedite the preliminary determination. In any event, it will be issued no later than sixty-five days after the date of this notice.

EFFECTIVE DATE: July 10, 1986.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On June 24, 1986, we received a petition in proper form filed by the California Pistachio Commission, Keenan Farms Inc., Kern Pistachio Hulling and Drying Co-op, Pistachio Producers of California and T.M. Duché Nut Company, Inc. on behalf of growers and processors-roasters in the U.S. pistachio nuts industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that growers, processors and exporters in Iran of roasted pistachios receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Iran is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303(a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products materially injure, or threaten material injury to, a U.S industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on roasted in-shell pistachios from Iran and have found that it meets the requirements of section 702(b) of the Act. We are initiating a countervailing duty investigation to determine whether the growers, processors and exporters in Iran of roasted pistachios (as described in the "Scope of Investigation" section of this notice) receive benefits which constitute bounties or grants. The Department intends to expedite the preliminary determination. In any event, it will be issued no later than sixty-five days after the date of this notice.

Scope of Investigation

The product covered by this investigation is all roasted in-shell pistachio nuts, whether roasted in Iran or elsewhere, from which the hull has been removed, leaving the inner hard shells and the edible meat, currently provided for under item 145.53 of the *Tariff Schedules of the United States* (TSUS) *Allegations of Bounties or Grants.*

The petition alleges that growers, processors and exporters in Iran of roasted pistachios receive benefits under the following programs which constitute bounties or grants. We are initiating an investigation on the following allegations:

- Preferential Exchange Rate.
- Foreign Exchange Retention Scheme.
- The Foreign Exchange (Wariznameh) Certificate.
- Price Supports and/or Guaranteed Purchase of all Production.
- Technical Support.
- Provision of Water and Irrigation.
- Preferential Provision of Fertilizer and Machinery.
- Preferential Credit.
- Tax Exemptions.

We are not initiating an investigation on the following allegation:

- Investment in Rural Development Infrastructure. Petitioners allege that pistachio growers in Iran may benefit from government investment in rural development projects. According to information supplied in the petition, these include improvements in such basic infrastructure as telephone systems, roads and airstrips, and provision of electricity, water, schools and medical centers. Petitioners do not cite any information or make any specific allegation that these or any other projects undertaken by the government to improve rural infrastructure are intended to benefit any specific industrial products or crops, or a specific region. We have consistently held that government activities such as provision of roads, schools, etc., constitute a bounty or grant only when they are limited to a specific enterprise or industry, or group of enterprises or industries.

Because there is not information in the petition that this is the case for any rural infrastructure development projects undertaken by the government, we will not initiate an investigation on this allegation. We will examine any programs or provision of benefits which may provide a bounty or grant to pistachio growers through our investigation of the other allegations made in the petition.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 30, 1986.

[FR Doc. 86-15595 Filed 7-9-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-603, C-223-601, C-331-601, C-508-603, C-779-601, C-421-601, C-333-601, C-337-601, and C-301-601]

Postponement of Preliminary Countervailing Duty Determinations: Certain Fresh Cut Flowers From Canada, Costa Rica, Ecuador, Israel, Kenya, the Netherlands, and Peru, Standard Carnations From Chile, and Miniature Carnations From Colombia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioner, the Floral Trade Council, the Department of Commerce is postponing its preliminary determinations in the countervailing duty investigations of certain fresh cut flowers from Canada, Costa Rica, Ecuador, Israel, Kenya, the Netherlands, and Peru, standard carnations from Chile, and miniature carnations for Colombia. The preliminary determinations will be made on or before October 20, 1986.

EFFECTIVE DATE: July 10, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Loc Nguyen, Office of Investigations, Import Administration,

International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–0161 or 377–0167.

SUPPLEMENTARY INFORMATION: On June 10, 1986, the Department initiated countervailing duty investigations on certain fresh cut flowers from Canada, Costa Rica, Ecuador, Israel, Kenya, the Netherlands, and Peru, standard carnations from Chile, and miniature carnations from Colombia. In our notices of initiation we stated that we would issue our preliminary determinations on or before August 14, 1986 (51 FR 21946–51, June 17, 1986).

On June 25, 1986, the petitioner filed a request that the preliminary determinations in these investigations be postponed for up to 65 days, or no later than 150 days after the date on which the petition was filed.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that the preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision, and the request by petitioner in these investigations, the Department is postponing its preliminary determinations to no later than October 20, 1986.

This notice is published pursuant to section 703(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

July 3, 1986.

[FR Doc. 86–15594 Filed 7–9–86; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–504]

Petroleum Wax Candles From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that petroleum wax candles from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring or are threatening to materially injure, a United States industry.

EFFECTIVE DATE: July 10, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–2613 or 377–1769.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that petroleum wax candles from the PRC are being, or are likely to be, sold in the United States at less than fair value as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The weighted-average margin applicable to all exporters is 54.21 percent.

Case History

On September 4, 1985, we received a petition in proper form filed by the National Candle Association, an organization of domestic manufacturers of petroleum wax candles. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on September 30, 1985 (50 FR 39743), and notified the ITC of our action.

On October 16, 1985, the ITC found that there is a reasonable indication that imports of petroleum wax candles from the PRC are materially injuring, or threatening material injury to, a U.S. industry (U.S. ITC Pub. No. 1768, October 1985).

On November 27, 1985, we presented a questionnaire to counsel for the China National Native Produce & Animal By-Products Import & Export Corporation, a major PRC exporter of the subject merchandise to the United States. On January 3 and 15, 1986, we received replies to the questionnaire.

We published a preliminary determination of sales at less than fair value on February 19, 1986 (51 FR 6016). Our notice of the preliminary determination provided interested parties with an opportunity to submit views orally or in writing. Accordingly, we held a public hearing on March 12, 1986.

We published an amendment to our preliminary determination on March 7, 1986 (51 FR 7977).

We published a postponement of our final antidumping duty determination on March 19, 1986 (51 FR 9490).

Scope of Investigation

The products covered by this investigation are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers. The products are classified under the *Tariff Schedules of the United States* (TSUS) item 755.25, Candles and Tapers.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

We used the purchase price of the subject merchandise to represent United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price of the subject merchandise as provided in section 772 of the Act, on the basis of the C&F or CIF prices with deductions, where applicable, for ocean freight and marine insurance. No deduction was made for inland freight in the PRC because we had no information concerning factory-to-port distances or freight rates in the surrogate country. Therefore, we made fair value comparisons between prices on an f.o.b. basis.

Foreign Market Value

In accordance with section 773(c) of the Act, we used the weighted-average price of candles imported into the United States from Malaysia as the basis for determining foreign market value.

Petitioner alleged that the economy of the PRC is state-controlled to an extent that sales in that country do not permit a determination of foreign market value under section 773(a). Respondent claims that the PRC candle sector is not state-controlled and, therefore, the Department should base foreign market value on prices or costs in the home market.

We have examined the information submitted by the parties and additional information on the nature of the PRC

economy and have concluded that the PRC is a state-controlled-economy country for purposes of this investigation.

In analyzing whether an economy is state-controlled within the meaning of section 773(c), the Department examines, among other things, (1) the degree of government ownership of the means of production, (2) the degree of centralized government control over allocation of resources or inputs, (3) the degree of centralized government control over output and (4) the relative convertibility of the country's currency and the degree of government control over trade.

Since late 1984, extensive economic reforms have been introduced in the PRC. Parallel with this has been an increase in the output of rural-based industrial enterprises. These enterprises operate largely outside centralized control. Many of the candle producers are rural enterprises.

The candle factories we investigated are managed by, or operate under the auspices of, collectives. Their inputs are not supplied under quota, nor are the prices they pay for their inputs set directly by the central government. Their output is not subject to quotas or price controls. However of the producers we investigated, the overwhelming majority of their output was sold to state-owned trading companies. While evidence on the convertibility of the Renminbi is conflicting, exporters are require to repatriate their foreign exchange earnings and a portion must be surrendered to the Bank of China. Foreign trade is carried out by licensed trading companies and 14 national foreign trade corporations, with importers and exporters free to select their agents.

Despite some indicia of market forces at work in the PRC candle sector, there are other factors which lead us to conclude that we cannot treat the sector as non-state-controlled. Most importantly, the major input into candles, paraffin wax, is a quota product. It is produced by state-owned petroleum firms facing centrally-set prices and quotas. There is no evidence that market forces have any bearing on the price of quota wax.

Wax that is produced in excess of the quota can be sold at prices within 20 percent of the centrally-set price. Certain other inputs used by the candle producer, such as cotton yarn for wicks and coal, may be subject to the same conditions.

While the central government does not directly establish the price of wax to candle producers or the amount of wax that is to go into candle production, it decisions on the magnitude of the quota for wax production and the price for quota wax effectively determine the supply and price range for the "uncontrolled" portion. Thus, the PRC government, through its quotas and prices for quota wax and other inputs, controls the allocation of those inputs.

A second consideration is the relative insulation of the candle (and other) producers in the PRC from external market factors. While trade is no longer a state monoply, the government employs extensive foreign exchange controls. Candle producers do not and cannot receive the foreign exchange from their exports. Only the national foreign trade corporations and the licensed trading companies are permitted to hold foreign exchange.

Moreover, licenses are required for all imports. Additional measures to limit imports were introduced in 1985. Ths could potentially limit competition by similar or competing imports. It could also insulate supplies to candle producers from external market sources. Licenses are also require for many exports. This "layer" of government potentially creates a buffer between the internal PRC economy and the external, world market.

While controls in foreign exchange and imports and exports are not dispositive on the issue of state-control (certain market economies display many of these characteristics), they are important criteria to consider in countries that are moving from highly centralized systems by introducing certain market-like mechanisms. This is because such controls are traditionally employed by nonmarket economies to maintain economically irrational prices by protesting their internal prices from external market forces. As a result, we necessarily place more emphasis on the existence of such controls in countries like the PRC than we would in countries that are traditionally more market oriented.

For the foregoing reasons, we have concluded that the PRC is a state-controlled-economy country for the purpose of this investigation.

As result, section 773(c) of the Act requires us to use either the prices of, or the constructed value of, such or similar merchandise in a "non-state-controlled-economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the state-controlled-economy country.

We determined that Egypt, India, Indonesia, Morocco, Pakistan, the Philippines, and Thailand were the countries at the most comparable stages of economic development to the PRC and it would, therefore, be appropriate to base foreign market value on their prices. We sent questionnaires to known manufacturers of petroleum wax candles in each of these countries. We received one reply to the questionnaire from a company in India, but the candles produced by the Indian company were not the product under investigation.

We also received some information from two candle companies in Thailand. One of the companies made only a few of the candle types within the scope of this investigation. The other company produced a broader range of candles, but it was impossible to verify the information this company provided in accordance with section 776(a) of the Act. None of the manufacturers in the four other countries named above replied to the questionnaire or provided any information.

We also asked and received information from PRC candle producers concerning their factors of production in order that we might base foreign market value on constructed value based on PRC factors of production valued in a non-state-controlled economy country at a comparable level of economic development in accordance with § 353.8(c) of the Department of Commerce Regulations. However, because we were unable to develop necessary information in the non-state-controlled economy country chosen, it was not possible to so calculate constructed value.

Lacking home market prices from non-state-controlled economy countries at a level of economic development comparable to that of the PRC, and lacking information needed to calculate constructed value, we have based foreign market value on the prices of imports of the same class or kind of merchandise into the U.S. from Malaysia. Of the countries exporting candles to the United States, Malaysia is at a level of economic development most comparable to that of the PRC. Therefore, we calculated foreign market value on the basis of f.o.b. values of candles imported into the United States from Malaysia during the nine month period of investigation. Comparisons were made using weighted-average Malaysian prices for the same type candles as sold by the PRC. We adjusted Malaysian prices by the cost of boxes supplied by purchasers of the PRC candles, where applicable.

We considered using a basket of import prices including prices of imports from Thailand, Indonesia or Colombia to determine foreign market value. Since we ultimately eliminated those countries from consideration, however, we were left with simply using Malaysia's prices. The volume and value of Thai exports to the United States of all candles, not only the candles under investigation, were extremely small and Thailand has been found in previous investigations to confer export subsidies on other products. Similarly, we have determined in previous investigations that Indonesia subsidizes exports. Imports from Indonesia were likewise very small during the period of investigation. As for Colombia, we have determined in previous investigations that its exports are subsidized. We have no evidence whether the candles imported from Colombia are the product under investigation. Further, imports from Colombia are very small relative to imports from the PRC. Given these considerations, we decided not to use export data from those countries.

It is our preference not to use export data from countries known to provide export subsidies when there is other data available. *See* Antidumping: Steel Wire Nails from the People's Republic of China; Final Determination of Sales at Less Than Fair Value, 51 FR 10247 (March 25, 1986); Certain Small Diameter Welded Carbon Steel Pipes and Tubes from the People's Republic of China; Final Determination of Sales at Less Than Fair Value, published concurrently with this notice.

All indications are, however, that Malaysia does not use export subsidies since our only previous countervailing duty investigation of a product from Malaysia resulted in a final negative determination. We also know that Malaysia exports the candles under investigation and have limited our comparisons to such candles. While imports from Malaysia are small relative to those from the PRC, they are ten or more times those of Thailand, Indonesia or Colombia.

Negative Determination of Critical Circumstances

Petitioner alleged that imports of petroleum wax candles from the PRC present "critical circumstances." Under section 735(a)(3) of the Act, "critical circumstances" exist if we determine (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

We generally consider the following data in order to determine whether massive imports have taken place: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports.

For purposes of this finding, we analayzed recent trade statistics on import levels for petroleum wax candles from the PRC for equal periods immediately preceding and following the filing of the petition. We also took into consideration seasonal factors. Based on our analysis of recent import statistics, we find that there is no reasonable basis to believe that imports of the subject merchandise from the PRC have been massive over a short period.

Since we do not find there have been massive imports, we do not need to consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value.

Therefore, we determine that critical circumstances do not exist with respect to imports of petroleum wax candles from the PRC.

Verification

As provided in section 776(a) of the Act, we verified data used in making this determination by using verification procedures which include on-site inspection of manufacturers' facilities and examination of company records and selected original source documentation containing relevant information.

Petitioner's Comments

Comment 1: Petitioner argues that the PRC is a state-controlled economy and should be treated as such under the antidumping duty law.

DOC response: We agree. See our discussion above in the Foreign Market Value section of this notice.

Comment 2: Petitioner argues that critical circumstances exist in this case.

DOC response: We disagree. See our discussion above under Negative Determination of Critical Circumstances.

Comment 3: Petitioner argues that, under section 773(c) of the Act, Malaysia is the appropriate choice for the surrogate country in this investigation. It contends that a combination of macroeconomic indicators shows that Malaysia and the PRC are at comparable levels of economic development and that the Department should not use Gross National Product (GNP) as the sole measure of comparability.

DOC position: Using a variety of indicators, one of which is GNP, we determined that Malaysia is not at a comparable level of economic development to the PRC and therefore cannot be used as a surrogate under section 773(c) of the Act or § 353.8(a) and (b)(1) of the Commerce regulations. Thus, we have not used Malaysian home market prices of candles. As noted in the Foreign Market Value section of this notice, we were unable to get either home market prices or constructed value information from any of the non-state-controlled economy countries at a level of economic development comparable to the PRC. Lacking such information, we had to use the best information available. We determined that the best information available is Malaysian export prices for the candles under investigation because, of the countries exporting candles to the United States, Malaysia is at a level of economic development most comparable to the PRC.

Comment 4: Petitioner argues that the Department should have used Malaysian home market prices even if Malaysia is not a country at a level of economic development comparable to the PRC, pursuant to § 353.8(b)(2) of the Commerce regulations.

DOC position: In this investigation, as in previous antidumping investigations of state-controlled-economy countries, we found it impossible to make the appropriate adjustments to Malaysian home market prices to satisfy the requirements of § 353.8(b)(2).

See Final Determination of Sales at Less Than Fair Value: Chloropicrin From the People's Republic of China, 49 FR 5982 (Feb. 16, 1984); Final Determination of Sales at Not Less Than Fair Value; Canned Mushrooms From the People's Republic of China, 48 FR 45445 (Oct. 5, 1983). As explained in the Foreign Market Value section of this notice, we have resorted to Malaysian export prices as best information available.

Respondent's Comments

Comment 1: Respondent argues that the PRC candle industry is not state-controlled.

DOC response: We disagree. See discussion above in the Foreign Market Value section of this notice.

Comment 2: Respondent argues that the Department's preliminary

determination that the PRC candle industry was state-controlled was based on "either unstated assumptions or anonymous information furnished by petitioner."

DOC response: We have based our final determination that the PRC candle industry is state-controlled on the results of an investigation we conducted in China. Also, the petitioner's sources have been identified to the Department.

Comment 3: Respondent argues that the Department's preliminary determination was not made on a fair basis because we compared Bureau of Census statistics concerning Malaysian import prices with individual sale prices of PRC candles.

DOC response: For our final determination we have based foreign market value on the prices of individual sales of Malaysian candles to the United States

Comment 4: Respondent argues that the Department in fact used Malaysia as a surrogate by basing foreign market value on Malaysian sales prices but should not have done so because Malaysia is not at a stage of economic development comparable to the PRC.

DOC response: See our response to petitioner's Comment 3 above.

Comment 5: Respondent argues that the Department should not have excluded candle imports from Jamaica and Colombia in determining foreign market value.

DOC response: At the preliminary determination we excluded imports from Jamaica from consideration because we received information from petitioner that the Jamaican candles were "household candles" not subject to this investigation. As noted above, for the final determination, we have based foreign market value on Malaysian imports of candles of types which are subject to the investigation. We have excluded from our calculation all other types of Malaysian candles.

We have excluded imports of candles from Colombia from our calculations because: (1) Prior countervailing duty investigations have shown that exports from Colombia benefit from export subsidies; (2) we do not know whether the candles imported from Colombia are the product under investigation; and (3) the imports from Colombia are very small relative to imports from the PRC. Therefore, we consider import prices of candles from Colombia to be an unreliable basis for calculating foreign market value.

Continuation of Suspension of Liquidation

We are directing the United States Customs Service to continue to suspend liquidation of all entries of petroleum wax candles from the PRC that are entered, or withdrawn from warehouse, for consumption, on or after February 19, 1986, the date of publication of the preliminary determination in the **Federal Register.** The United States Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The bond or cash deposit amounts established in our amended preliminary determination of March 7, 1986, remain in effect with respect to entries or withdrawals made prior to the date of publication of this notice in the **Federal Register.** With respect to entries or withdrawals made on or after the publication of this notice, the bond or cash deposit amounts required are shown below.

Manufacturer/producer/exporter	Weighted-average margin percentage.
All Producers/Manufacturers/Exporters	54.21

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administrative.

The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on petroleum wax candles from the PRC entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1763d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

July 7, 1986.

[FR Doc. 86-15591 Filed 7-9-86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 60584-6084]

Proposed Joint Federal Information Processing Standard 100-1/Federal Standard 1041A, Interface Between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-Switched Data Networks (PSDN), or between Two DTEs, by Dedicated Circuit

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of proposed revision of Federal information processing standard 100/Federal standard 1041, interface between data terminal equipment (DTE) and data circuit-terminating equipment (DCE) for operation with packet-switched data communications networks.

SUMMARY: A revision of Federal Information Processing Standard 100/Federal Standard 1041 is proposed to reflect changes in technical specifications developed and approved by the International Telegraph and Telephone Consultative Committee (CCITT) of the International Telecommunication Union (ITU) and the International Organization for Standardization (ISO). The proposed revision will adopt a voluntary industry standard, ANSI X3.100-1986, which in turn adopts CCITT Recommendation X.25 (1984), ISO 7776 and ISO 8208.

Prior to the submission of this proposed joint standard to the Secretary of Commerce for review and approval as a revised FIPS/FED-STD, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed joint standard contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the joint standard, is provided in its entirety in this notice; and (2) a specification portion which deals with the technical requirements of the joint standard. Interested parties may obtain a copy of

the technical specifications from the Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Technology Building, Room B154, Gaithersburg, MD 20899, (301) 921–3151.

DATE: To be considered, comments on this joint standard must be received on or before October 8, 1986.

ADDRESS: Comments concerning the adoption of this joint standard are invited and may be sent to Director, Institute for Computer Sciences and Technology, ATTN: Proposed Joint FIPS 100–1/FED–STD 1041A, National Bureau of Standards, Technology Building, Room B154, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the record and will be available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FUTHER INFORMATION CONTACT: Mr. Michael Wong, Center for Computer Systems Engineering, Institute for Computer Sciences and Tecnology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921–3723.

Dated: July 2, 1986.

Ernest Ambler,

Director, National Bureau of Standards.

Federal Information Processing Standards Publication 100–1

Federal Standard 1041A

(date)

Announcing the Joint Standard for Interface Between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-Switched Data Networks (PSDN), or Between Two DTEs, by Dedicated Circuit

Federal Information Processing Standards Publications are developed and issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

Federal Standards in the "telecommunications" series are developed by the Office of the Manager, National Communications System. These Federal Standards are issued by the General Services Administration pursuant to the Federal Property and Administrative Services Act of 1949, as amended.

Name of Standard. Interface between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-Switched Data Networks (PSDN), or between two DTEs, by Dedicated Circuit.

Category of Standard. Hardware, Data Transmission.

Explanation. This revision supersedes the Federal Information Processing Standards Publication (FIPS PUB) 100 and the Federal Standard (FED-STD) 1041. It reflects the necessary changes to accommodate the CCITT Recommendation X.25 (1984), ISO 7776, and ISO 8208 and specifies an interface between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DTE) for operation with Packet-Switched Data Networks (PSDN), or between two DTEs, by dedicated circuit.

This joint standard is intended to enhance interoperability by specifying certain subsets and other constraints on Federal use of CCITT Recommendation X.25, ISO 7776, and ISO 8208.

Approving Authority. Secretary of Commerce (Federal Information Processing Standards). Administrator, General Services Administration (Federal Standards).

Maintenance Agency. The National Bureau of Standards (NBS) and the Office of the Manager, National Communications System (NCS) will jointly maintain this standard coordinating as necessary with the General Services Administration (GSA).

Cross Index. (a) American National Standard X3.100–1986, Interface between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-Switched Data Network (PSDN), or between two DTEs, by Dedicated Circuit.

(b) CCITT Recommendation X.25, Interface between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Terminals Operating in the Packet Mode on Public Data Networks.

(c) ISO 8208 (1985), Information Processing Systems—Data Communications—X.25 Packet Level Protocol for Data Terminal Equipment.

(d) ISO 7776 (1985), Information Processing Systems—Data Communications—High-Level Data Link Control Procedures—Description of the 1984 X.25 LAPB-Compatible DTE Data Link Procedures.

Objectives. The objectives of this standard are to:

—reduce the Federal government's cost of acquiring and using computer and telecommunications equipment and services by increasing the sources of supply and increasing the reutilization of equipment;

—to provide a standard interface and protocol for transmitting data between Federal systems and public packet-switched data communications networks;

—to assure the compatibility and interoperability of Federal computer and telecommunications equipment and services that use packet switched technology.

Applicability. The technical specifications of this joint standard shall be employed in the acquisition, design, and development of all Federal DTE and PSDN whenever an interface based on CCITT Recommendation X.25 (1980), CCITT Recommendation X.25 (1984), ISO 7776, or ISO 8208, is required.

Implementation. The provisions of this joint standard are effective (six months after date of publication of final document in the Federal Register). Any applicable equipment or service ordered on or after the effective date, or procurement action for which solicitation documents have not been issued by that date, must conform to the provisions of this standard unless a waiver has been granted in accordance with the procedures described below.

This joint standard shall be reviewed by the Institute for Computer Sciences and Technology, National Bureau of Standards and the Office of the Manager, National Communications System, within five years after its effective date. This review shall take into account technological trends and other factors to determine if the joint standard should be affirmed, revised, or withdrawn.

Specifications. This joint standard adopts American National Standard X3.100–1986, Interface between Data Terminal Equipment (DTE) and Data Circuit-Terminating Equipment (DCE) for Operation with Packet-Switched Data Networks (PSDN), or between two DTEs, by Dedicated Circuit.

Temporary note: X3.100–1986 (dpANS X3.100) is out for 30-day balloting at the X3S3 level. NBS and NCS have every intention that this revised joint standard will include all provisions specified by dpANS X3.100. In the event that the final, approved version of X3.100–1986 turns out to be substantially different than the present version, additional restrictions may have to be added to the revised joint standard.

Waivers. Waiver of this standard is required when an interface based on CCITT Recommendation X.25 (1980), CCITT Recommendation X.25 (1984), ISO 7776, or ISO 8208 is to be employed and has either one of the following conditions: (1) The interface has options that are not permitted by this standard; (2) The interface does not implement all options mandated by this standard.

Heads of agencies desiring a waiver from the requirements stated in this standard, so as to acquire applicable equipment or service not conforming to this standard, shall submit a request for waiver to the Administrator, General Services Administration for review and approval. Approval will be granted if, in the judgment of the Administrator after consultation with the Assistant Secretary of Commerce for Productivity, Technology and Innovation, based on all available information including that provided in the waiver requests, a major adverse economic or operational impact would occur through conformance with thindard.

A request for waiver shall include a justification for the waiver, including a description and discussion of the adverse economic or operational impact that would result from conforming to this standard as compared to the alternative for which the waiver is requested. ICST and NCS will provide technical assistance, as required, to GSA.

Where to Obtain Copies. Copies of this publication are for sale by the National

Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 100–1 (FIPS PUB 100–1) / Federal Standard 1041A (FED–STD 1041A), and title. When microfiche is desired, this should be specified. Payment may be made by check, money order, purchase order, credit card, or deposit account.

[FR Doc. 86–15396 Filed 7–9–86; 8:45 am]
BILLING CODE 3510–CN–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Amendments Relating to Grain Load-Out Procedures for Futures Deliveries

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange") has submitted a proposal to amend CBT Regulation 1081.01, Regularity of Warehouses, regarding load-out procedures for grains—corn, oats, soybeans, and wheat—delivered on the CBT's futures contracts. The proposed amendments would revise the Exchange's procedures governing the load-out of grain from regular warehouses following the surrender of warehouse receipts by persons who have received such receipts in delivery on the CBT's futures contracts for these commodities. Under the proposed amendments, operators of regular warehouses would be required to commence load-out of the indicated grain commodities at the normal rate of load-out for such warehouses beginning on the third business day following the later of the date of receipt of loading orders from the warehouse receipt holder or the day after the date on which the receipt holder's transportation equipment is constructively placed. The proposed amendments would further stipulate that, regardless of a warehouse's normal daily rate of load-out, warehouse operators must load out the indicated commodities at a specified minimum daily rate.

The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before August 11, 1986.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to CBT Regulation 1081.01—Load-Out procedures.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7303.

Text of major amendments: In accordance with section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982), and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis, on behalf of the Commission, has determined that the proposal submitted by the Chicago Board of Trade relating to load-out procedures for grain deliveries is of major economic significance. Accordingly, the primary proposed amendments are added as follows:

* * * * *

1081.01(12) Load-Out Procedures

A. Load-Out Procedure—

* * * * *

It shall be the responsibility of the warehouse receipt holder to supply suitable transportation.

* * * * *

It shall be the responsibility of the warehouse receipt holder to request the warehouseman to arrange for all necessary Federal Grain Inspection Service and stevedoring service. The warehouse receipt holder may specify the stevedoring service to be called. The warehouseman shall not be held responsible for non-availability of these services.

B. Load-Out Rates—In the event a regular grain warehouse receives written loading orders for load-out of grain against canceled warehouse receipts, the warehouse shall be required to load out all grain at the normal rate of load-out for the facility beginning on the third business day following receipt of such loading orders or on the day after a conveyance of the type identified in the loading orders is constructively placed, whichever occurs later. This rate of load-out shall depend on the conveyance being loaded and shall not be less than the following minimums per business day:

RAIL CONVEYANCE OR WATER CONVEYANCE

	Hopper cars	Vessel (bushels)	Barges
Wheat, corn, soybeans	25	200,000	2
Oats	15	120,000	1

Regular grain warehouses shall not be required to meet these minimum load-out rates when transportation has not been actually placed at the warehouse, transportation equipment is not clean and load ready, inspection services are not available, a condition of force majeure exists, inclement weather prevents loading, or stevedoring services are not available in the case of water conveyance. In addition, regular grain warehouses shall not be required to meet the minimum load-out rate for a conveyance when a "like" conveyance has been constructively placed for load-in prior to the "like" conveyance for load-out. However, when a conveyance for load-out is constructively placed after a "like" conveyance for load-in, the warehouse will load-in grain from the "like" conveyance at the normal rate of load-in for the facility. This rate of load-in shall depend on the conveyance(s) being unloaded and shall not be less than the following minimums per business day:

RAIL CONVEYANCE AND WATER CONVEYANCE

	Hopper cars	Vessel (bushels)	Barge
Wheat, corn, soybeans	25	50,000	1
Oats	15	50,000	1

Regular warehouses shall not be required to meet these minimum load-in rates when a condition of force majeure exists, inspection services are not available, inclement weather prevents unloading, or stevedoring services are not available in the case of water conveyance.

For purposes of this regulation, vessel and barge are "like" conveyances.

C. Notification to Warehouse—The warehouse operator shall load-in and load-out grains in the order and manner provided in parts A and B of this Regulation, except that his obligation to load-out grain to a given party shall commence no sooner than three business days after he receives cancelled warehouse receipts and written loading orders from such party, even if such party may have a conveyance positioned to accept load-out of grain before that time. If the party taking delivery presents transportation equipment of a different type (rail, barge or vessel) than that specified in the loading orders, he is required to provide the warehouse operator with new

loading orders, and the warehouse operator shall be obligated to load-out grain to such party no sooner than three business days after he receives the new loading orders. Written loading orders received after 2:00 p.m. (Chicago time) on a given business day shall be deemed to be received on the following business day.

* * * * *

Additional information: The CBT states that the proposed amendments will be made effective with respect to all newly listed contracts following Commission approval.

According to the Exchange, the proposed amendments are intended to provide holders of warehouse receipts which are received in delivery on the Exchange's futures contracts with greater certainty regarding the time of the commencement and pace of load-out of grains than is provided under the current terms of Regulation 1081.01. The Exchange further notes that, although the proposed minimum rates for load-out and load-in exceed the stated 8 hour capacity of some currently regular warehouses, these minimum rates can be met by all warehouses and that these minimum rates are representative of capabilities in the delivery market. The CBT indicates, in this respect, that takers of delivery would normally expect, and should have assurance of, rates of load-out at the proposed level or higher.

Other materials submitted by the CBT in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts, Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by [August 11, 1986].

Issued in Washington, DC on July 7, 1986.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 86-15508 Filed 7-9-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Environmental Statements; North Branch Chicago River, IL; Intent

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft supplement to the final environmental impact statement supplement.

SUMMARY: 1. The proposed project involves construction of flood control reservoirs in the North Branch Chicago River watershed in Lake and Cook Counties, Illinois. The reservoirs would be excavated below existing ground level and would be dry during non-flooding periods, except for a permanent sediment pool. Each reservoir would include a pumping station to empty the reservoir after each flood event had subsided.

2. The alternatives discussed in the previous final EIS were essentially from the plan developed by the Soil Conservation Service (SCS) of the U.S. Department of Agriculture, in cooperation with the Metropolitan Sanitary District of Greater Chicago (MSDGC). Their Floodwater Management Plan was released in 1974 and has been partially implemented by MSDGC. This plan was coordinated with all interested parties and agencies during the SCS/MSDGC study. The U.S. Army Corps of Engineers began reevaluation of this plan in 1976, and public participation has included numerous meetings and coordination with the State of Illinois, MSDGC, SCS, Illinois Division of Water Resources, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Illinois Department of Conservation, and the Northeastern Illinois Planning Commission.

3. This EIS Supplement will address proposed project changes involved with the acquisition of additional lands at one of the proposed reservoir sites and the use of a new site in place of a previously proposed site. Significant issues to be analyzed in depth are destruction of wetlands; disruption or destruction of terrestrial and aquatic habitat; mitigation for habitat losses; disposal of excavated material; and aesthetic effects.

4. The Draft Supplement to the FEIS is expected to be available in August 1986.

5. Questions about the proposed action and Draft Supplement to the FEIS can be answered by: Paul Whitman, U.S. Army Corps of Engineers, Chicago District, Environmental and Social Analysis Section, 219 South Dearborn Street, Chicago, Illinois 60604 (312/353-7795).

Frank R. Finch,

Ltc, Corps of Engineers, District Engineer.

[FR Doc. 86-15626 Filed 7-9-86; 8:45 am]

BILLING CODE 3710-HN-M

DEPARTMENT OF EDUCATION

Office for Civil Rights

Annual Operating Plan

AGENCY: Department of Education.

ACTION: Request for comments on annual operating plan for fiscal year 1987.

SUMMARY: The Secretary of Education invites comments on the proposed FY 1987 Annual Operating Plan for the Office for Civil Rights.

DATE: Interested persons are invited to submit comments, suggestions and objections regarding the proposed plan on or before August 25, 1986.

ADDRESS: Written comments should be addressed to Alicia Coro, Acting Assistant Secretary for Civil Rights, Department of Education, 400 Maryland Avenue, SW., Mail Stop 2516, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Fred Tate, (202) 732-1479.

I. Introduction

The Office for Civil Rights (OCR) is responsible for ensuring that no person is unlawfully discriminated against on the basis of race, color, national origin, sex, handicap, or age, in the delivery of services or the provision of benefits in programs or activities receiving financial assistance from the Department of Education (ED). The jurisdictional authorities under which OCR operates are Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

These authorities cover ED-funded programs and activities carried out by 50 State educational and rehabilitation agencies and those of their subrecipients, as well as those of the District of Columbia and the territories and possessions of the United States; approximately 16,000 local educational agencies; and approximately 3,300 institutions of higher education. In addition, OCR's civil rights authorities cover programs and activities in other institutions that received ED funds, such as libraries and museums.

OCR ensures compliance with Federal civil rights statutes by the recipients of ED financial assistance through two basic types of activities: compliance activities and technical assistance activities. Most of OCR's compliance activities (including complaint investigations, compliance reviews, and monitoring the implementation of some voluntary compliance plans) are required by the *Adams* court orders. However, OCR has some discretion over where it will conduct its compliance review and other monitoring activities and what those activities will cover. For the most part, OCR concentrates its investigative activities on those recipients that have been identified as having possible compliance problems. OCR also provides technical assistance, including the transfer of information, material, and skills to facilitate ED recipients' voluntary compliance with civil rights laws and to inform beneficiaries of their rights.

Compliance activities and technical assistance activities also may be combined. OCR may provide technical assistance to recipients at any time after the initiation of a compliance review or complaint investigation, or following its conclusion, either in response to a request from a recipient or after an inquiry by investigative staff as to whether a recipient would be interested in such assistance. As a result, compliance issues may be resolved in a nonconfrontational manner that facilitates closer cooperation at the recipient level, while assuring that the rights of beneficiaries protected.

During FY 1987, OCR will continue to use two operational techniques designed to improve the efficiency of the case handling process. The first, Early Complaint Resolution (ECR), is a process in which OCR acts as a mediator between the complainant and the recipient to negotiate a settlement between them. If the mediation is successful, OCR closes the complaint without an investigation. If the parties cannot reach an agreement, OCR investigates the complaint. During the first half of FY 1986, ECR was offered in 85 complaints, accepted and attempted in 40 complaints (47 percent) and completed in 39 complaints (one of which had been initiated before the beginning of the fiscal year). Of the 39 cases in which ECR was completed, 24 (62 percent) were resolved successfully through mediation.

The second technique is pre-letter of findings (LOF) settlement. With this process OCR reviews its findings with the recipient on each of the issues raised in the complaint or covered by the compliance review, in an attempt to reach a settlement prior to the issuance of an LOF addressing areas of noncompliance. When settlement is reached, OCR sets forth the terms of the settlement, along with the applicable statutory requirements, in an LOF sent to the recipient. Where the settlement results from a complaint, the complainant is also sent a copy of the LOF. If an area of noncompliance has been resolved, the LOF cites the basis for the violation findings and the remedy adopted by the recipient. OCR then monitors the implementation of these agreements.

The activities planned by OCR in FY 1987, and outlined below, are projected to be consistent with the apropriations authorized by Congress and approved by the President.

The following narrative and table describe the activities that OCR plans for FY 1987.

II. Compliance and Enforcement Activities

OCR's compliance and enforcement responsibilities are divided into three general categories: complaint investigations, compliance reviews, and monitoring activities.

A. Complaint Investigations

OCR's primary compliance activity is the investigation and resolution of complaints alleging discrimination. Each timely, complete complaint must be resolved in accordance with established procedures and time frames.

OCR received 1,409 complaints and closed 1,435 (some of which had been filed before the beginning of the fiscal year) during the first half of FY 1986. OCR had 997 pending complaints as of March 31, 1986. Alleged discrimination against handicapped persons was the basis of approximately 40 percent of complaint receipts; sex, race, multiple bases, national origin, and age complaints followed in descending order of frequency. The number of complaint receipts was almost evenly split between elementary and secondary schools and postsecondary schools (49 percent and 45 percent). During the first half of FY 1986, 86 percent of the complaints received involved issues of service delivery to students, 11 percent involved various employment issues, 1 percent involved both, and 2 percent involved other issues.

B. Compliance Reviews

OCR's compliance review program complements its complaint investigation activities. Compliance reviews differ from complaint investigations in that OCR has some discretion in selecting the issues and institutions for review. This permits OCR to target resources on compliance problems that appear to be serious or national in scope and that may not have been raised by complaints.

During the first half of FY 1986, OCR initiated 26 compliance reviews. During this same period, OCR closed 90 reviews, some of which had been initiated before the beginning of FY 1986. OCR had 56 open compliance reviews as of March 31, 1986.

During FY 1987, pursuant to the December 29, 1977, *Adams* order (*Adams* v. *Califano*, No. 3095–70 (D.D.C. December 29, 1977)), OCR intends to conduct an appropriate number of compliance reviews to ensure the enforcement of the civil rights laws.

While some review activities are required by the *Adams* order, most compliance reviews are discretionary and represent the only area in which OCR has flexibility to choose the institutions to be investigated, the issues to be examined, and the dates on which the reviews will begin. Selection of review sites is based on various sources of information, including survey data indicating potential compliance problems and information provided by complainants, interest groups, the media, and the general public.

C. Monitoring Activities

OCR closes many of the complaints and compliance reviews in which it has identified violations of civil rights statutes on the basis of a commitment by the recipient institution to complete remedial action at a future date. OCR has a responsibility to ensure that agreements to complete such remedial actions are carried out. To fulfill that responsibility, OCR may require a recipient to submit one or more progress reports detailing efforts to come into compliance with applicable laws. In some cases, OCR may go on-site to monitor a recipient's compliance with a negotiated remedial action plan. Other types of OCR monitoring activities include monitoring of higher education desegregation plans pursuant to the March 24, 1983, *Adams* order (*Adams* v. *Bell*, No. 3095–70 (D.D.C. March 24, 1983)) and vocational education Methods of Administration. In FY 1987, OCR will monitor the following:

- implementation by recipient institutions of remedial action plans resulting from OCR complaint investigations and compliance reviews;
- implementation of *Adams* higher education desegregation plans;
- review and implementation of corrective action plans to provide educational

opportunities to national origin minority students who are limited-English-proficient (*i.e.*, Title VI *Lau* plans); and

• activities of 50 States, four territories, and the District of Columbia, to ensure that they fulfill their Methods of Administration responsibilities under the Vocational Educational Guidelines and the July 1979 Memorandum of Procedures regarding the civil rights compliance of their vocational education subrecipients.

III. Technical Assistance Activities

Technical assistance complements OCR's compliance activities because it encourages voluntary compliance. Through technical assistance, OCR is able to reach a far greater number of recipients than it could solely through complaint investigations or compliance reviews. OCR provides technical assistance to recipients to inform them of their responsibilities under the civil rights statutes and the ED implementing regulations and of means of meet these responsibilities. OCR provides technical assistance to beneficiaries to inform them of their rights under the civil rights statutes and to explore voluntary methods of securing those rights. During FY 1986, in addition to responding to requests for technical assistance, OCR regional offices were encouraged to provide the maximum level of technical assistance outreach efforts based on existing staff resources and ongoing assessments of recipient and beneficiary needs.

In FY 1987, OCR will conduct the following technical assistance activities:

• Continue development and implementation of Memoranda of Understanding with State and local educational and human rights agencies to facilitate meeting mutual civil rights compliance goals and objectives and to promote the sharing of information;

• Coordinate with other ED program offices on the provision of civil rights-related technical assistance;

• Facilitate the exchange of information, materials, technical assistance strategies, techniques, and successful compliance practices and procedures among OCR staff provding technical assistance;

• Provide materials and courses to OCR regional investigators and legal staff to facilitate the provision of technical assistance training to educational institutions and State and local governments;

• Provide training to State and local educational agencies to enhance their capabilities to carry out civil rights activities; and

• Prepare materials for dissemination to recipients and beneficiaries, summarizing and explaining OCR policies and regulations.

IV. Program Management Activities

In conducting its compliance, enforcement, and technical assistance activities, OCR continues to implement a comprehensive program that includes—

• Formulating or updating regulations, policies, and investigative manuals;

• Providing technical guidance on complaints and compliance reviews referred from regional offices;

• Conducting hearings before Administrative Law Judges on the compliance of Federal financial recipients with civil rights requirements;

• Meeting with congressional staffs, school district representatives, college and university officials, complainants, and civil rights groups to discuss OCR activities;

• Conducting and evaluating OCR surveys and data collection projects to obtain information on recipients and beneficiary populations for enforcement purposes;

• Providing in-house programmatic training to investigators and legal staff engaged in civil rights compliance activities;

• Conducting a quality assurance program to ensure that a high level of quality is maintained in OCR compliance activities; and

• Operating a Management-by-Objectives program designed to enhance management planning and to track performance in meeting organizational goals.

V. Summary

While regional programs will vary due to considerations such as the number and type of complaints received, compliance reviews conducted, and requests for technical assistance, all OCR activities will be guided by national policies, priorities, and direction. As in previous years, each Regional Director will be responsible for timely fulfillment of OCR's obligations in handling complaint investigations and compliance reviews, monitoring compliance plans, and providing technical assistance to recipients and beneficiaries of ED financial assistance. A large part of each region's compliance program will involve the investigation of complaints of discrimination. Compliance reviews initiated in FY 1987 will include, as appropriate, each of OCR's civil rights jurisdictions in the geographic area served by each regional office. Monitoring activities will focus on ensuring that recipients comply with voluntary compliance plans and fulfill their vocational education Methods of Administration responsibilities. OCR will design technical assistance activities to respond to recipient and beneficiary needs.

Paperwork Reduction Act of 1980

The information collection activity to be undertaken pursuant to this plan is the Fall 1986 Elementary and Secondary School Civil Rights Survey. A notice was published in the **Federal Register** in the fall of 1985, prior to submission of the survey to OMB, notifying the public of OCR's intention to gather these data. This survey was approved by OMB on April 11, 1986 (OMB control number 1870–0500). Distribution to selected local educational agencies is scheduled for the fall of 1986. In addition to the above survey, OCR jointly sponsors two surveys with the Center for Statistics, the Fall Enrollment Survey (OMB control number 1850–0582), and the Completions of the Integrated Postsecondary Education Data System (OMB control number 3086–0238).

VI. Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed plan. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the end of the comment period will be considered in the development of the final plan.

All comments submitted in response to the proposed plan will be available for public inspection, during and after the comment period, at the Department of Education, Room 5074, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday of each week except Federal holidays.

Dated: July 7, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86–15553 Filed 7–9–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CS68–53 et al.]

A.J. Vogel et al.; Applications for Small Producer Certificates [1]

July 2, 1986.

Take notice that each of the applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Any person desiring to be heard or to make protest with reference to said applications should on or before July 16, 1986, filed with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS68-53	[1] 5-23-86	A.J. Vogel P.O. Box 143, Midland, TX 79702.
CS73-568-001	5-30-86	Frontier Fuels, Inc., a Delaware Corporation 615 Midland Tower Bldg. 223 West Wall Street, Midland, TX 79701.
CS86-26-000	[3] 6-24-86	Book Cliffs Oil and Gas Company 77 North Oak Knoll Ave., Suite 103, Pasadena, CA 91101.
CS86-70-000	[4] 5-27-86	CDQ, Inc., P.O. Drawer W, Artesia, NM 88211-0629.
CS86-71-000	5-27-86	Mercury Production Co., 1619 Pennsylvania Ave., Fort Worth, TX 76104.
CS86-73-000	6-24-86	Carl A. Schellinger P.O. Box 447, Roswell, NM 88201
CS86-74-000	6-2-86	Hub Energy Corp., 3760 Thanksgiving Tower, Dallas, TX 75201.
CS86-75-000	6-10-86	Farmers' Union Cooperative Royalty Co., P.O. Box 2119, Oklahoma City, OK 73101.
CS86-77-000	6-16-86	Hamm Production Co., P.O. Box 3310, Enid, OK 73702.
CS86-79-000	6-23-86	S&J Operating Co., P.O. Box 2249, Wichita Falls, TX 76307.
CS86-80-000	6-23-86	Kelley Operating Co., Ltd., 601 Jefferson, Suite 1100, Houston, TX 77002.
CS86-81-000	6-23-86	Kelley Oil Corp., 601 Jefferson, Suite 1100, Houston, TX 77002.
CS86-82-000	6-23-86	Joseph F. Mueller, 1504 Philtower Building, Tulsa, OK 74103.

[1] Letters dated May 20 and 28, 1986, received May 23 and June 2, 1986, respectively, requesting redesignation of the small producer certificate to reflect that F.H. Fuhrman died on October 21, 1984, and that A.J. Vogel is a direct heir and successor to F.H. Fuhrman's oil and gas properties.

[2] Letter dated May 29, 1986, requesting redesignation of the small producer certificate to reflect that Frontier Fuels, Inc., a Delaware Corporation, has acquired the assets of Fluor Oil and Gas Corporation, small producer certificate holder in Docket No. CS73-568.

[3] Letter dated June 18, 1986, correcting name of Applicant from Book Cliffs Oil & Gas Corp. to Book Cliffs Oil and Gas Company.

[4] Additional material received June 9, 1986.

[FR Doc. 86-15500 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-61-000, 001]

Bayou Interstate Pipeline System; Filing

July 2, 1986

Take notice that Bayou Interstate Pipeline System (Bayou), on June 25, 1986 tendered for filing Fourth Revised Sheet No. 4A and Third Revised Sheet No. 5 of its FERC Gas Tariff, Original Volume No. 1. The tariff sheets were filed pursuant to the Purchased Gas Cost Adjustment and Incremental Pricing Adjustment provisions contained in sections 15 and 16 of Bayou's tariff. Copies of the filing were served upon Bayou's jurisdictional customer and interested state regulatory agencies.

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 385.211 385.214). All such motions or protests should be filed on or before July 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15501 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-17-009]

Colorado Interstate Gas Co.; Proposed Changes in FERC Gas Tariff

July 3, 1986.

Take notice that on June 26, 1986 Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs Colorado 80944, tendered for filing proposed additions to its FERC Gas Tariff, Original Volume No. 2. The proposed addition will incorporate initial Rate Schedule X-69 which is a Gas Transportation Agreement (Agreement) between CIG and the Mountain Fuel Resources, Inc., (MFR). Pursuant to the Agreement CIG proposes to transport up to 25,000 Mcf per day, on a best efforts basis for the account of MFR. CIG will accept the receipt of volumes of natural gas from MFR in Kiowa County, Colorado and Morton County, Kansas. CIG will deliver thermally equivalent volumes less applicable fuel and unaccounted-for gas to MFR in Sweetwater County, Wyoming. The point(s) of receipt and delivery are set forth in Exhibit A to the Agreement.

CIG will charge MFR its presently effective Rate Schedule EUS-2 rate of 32.62 cents per Mcf, at 14.73 p.s.i.a., for volumes delivered to MFR. The 32.62 cent rate is subject to a final determination in the proceedings in Docket No. RP85-122-000.

By order issued May 1, 1986 in Docket No. CP86-17-000 the Commission authorizes the transportation service outlined above.

A copy of this filing was served upon MFR.

Any person desiring to be heard or to protest said filing should file a motion to invervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 214 or Rule 211 of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211). All such motions or protests should be filed on or before July 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15536 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-22-000,001]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 2, 1986.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on June 23, 1986, filed a tariff sheet proposing a special, out-of-period, PGA rate decrease to reflect in its rates recent rate decreases from two

of its major pipeline suppliers. The rate revisions, shown on Tenth Revised Sheet No. 31, are proposed to become effective on July 1, 1986 and would remain in effect until September 1, 1986, when superseded by Consolidated's regular semiannual PGA.

The rate revision would decrease Consolidated's RQ commodity rate by 29.58 cents per dekatherm and its RQ demand rate by two cents per Dt. Corresponding changes are proposed for other sales rates.

No changes in the currently, effective PGA surcharge or other components of Consolidated's rates are proposed.

Consolidated requests waiver of the notice requirements to make its rates effective July 1, 1986. Waiver of the PGA time-of-filing requirements is also requested to permit the proposed rates to become effective outside of Consolidated's normal six-month, March 1st and September 1st, PGA rate change schedule. Consolidated cites the Commission practice of accepting out-of-period PGA filings in support of the requested waivers.

Copies of the filing were served upon Consolidated's jurisidictional sales customers as well as interesed state commissions.

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 July 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15502 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-436-000 et al.]

Flag-Redfern Oil Co. et al.; Applications for Abandonment and Certificate of Public Convenience and Necessity

July 2, 1986.

Take notice that each of the applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service or for a certificate to sell natural gas in interstate commerce, as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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 proceedings. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI86-436-000—B—May 22, 1986[1].	Flag-Redfern Oil Company, P.O. Box 11050, Midland, Texas 79701.	El Paso Natural Gas Company, Avalon Field, Eddy County, New Mexico.	([2])	
CI86-531-000—B—June 23, 1986.	Britoil Ventures, Inc., 1360 Post Oak Boulevard, Suite 1600, Houston, Texas 77056.	United Gas Pipe Line Company, High Island Blocks 339, 340, 520, 545, 546, 547 and 548, Offshore Texas.	([3])	

[1] Additional information filed June 12, 1986.

[2] Application requests authorization for a limited-term abandonment for a three-year period of its sale of gas to El Paso from the Wagner Federal No. 2 well. Applicant states that the well is capable of producing 60-80 Mcf per day and is classified as a section 108 well. Applicant states that the purchase of this gas has been completely curtailed since January 4, 1986, and is expected to remain the same for an indefinite period of time. Applicant states that El Paso is not paying for gas not taken. Applicant plans to market the gas to El Paso Marketing Co. through current existing metering facilities, and have the gas transported by El Paso. Applicant was issued a small producer certificate in Docket No. CS67-66.

[3] Applicant proposes to abandon sales of excess gas to United for a period ending August 31, 1988, and sell instead to other purchasers under its small producer certificate in Docket No. CS84-60-000. Applicant requests pre-granted abandonment authorization for any sales of abandoned gas under its small producer certificate. Applicant also requests that such authorizations cover gas owned by other interest owners in the same wells and reservoirs, but Applicant states such other interest owners will be responsible for establishing their own relationships with United. Applicant states it is suffering a substantial loss of cash flow because its reserves are available for sale to United but have not been taken by United. Applicant states that the maximum volume of gas involved is 2,307 Mcf/d of NGPA section 102 gas and 5,543 Mcf/d of NGPA section 104 gas.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-15499 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01

[Docket No. SA86-22-000]

Petition for Adjustment Mangum Corp.

Issued: July 3, 1986.

On May 8, 1986, Mangum Corp. (Mangum) filed with the Federal Energy Regulatory Commission under section 502(c) of the Natural Gas Policy Act of 1978 [1] a petition for an extension of time to comply with the refund provisions of Order No. 399-A, "Refunds Resulting from Btu Measurement Adjustments," issued November 20, 1984.[2]

Mangum originally stated it needed additional time to make refunds to Trunkline Gas Company (Trunkline) because royalty owners had already received all their royalty interest payments for the gas sold to Trunkline and because Trunkline had decided to discontinue buying gas from Mangum, thus precluding Mangum from collecting refunds through the reduction of current royalty payments. However, Mangum has subsequently submitted information that it has reached an agreement with Trunkline for payment of the refunds, that Trunkline has now resumed its purchase of gas from Mangum, and that Mangum is collecting refunds from the royalty interest owners.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's rules of practice and

[1] 15 U.S.C. 3412(c) (1982).

[2] 49 FR 46,353, FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,612.

procedure.[3] Any person desiring to participate in this proceeding must file a motion to intervene in accordance with the provision of Subpart K within 15 days after the publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15537 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-4-25-000, 001]

Mississippi River Transmission Corp.; Rate Change Filing

July 3, 1986.

Take notice that on June 27, 1986, Mississippi River Transmission Corporation ("Mississippi") tendered for filing Fifteenth Revised Sheet No. 4 to its FERC Gas Tariff, Second Revised Volume No. 1. An effective date of July 1, 1986 is proposed.

Mississippi states that the purpose of this out-of-phase purchased gas cost adjustment (PGA) filing is to reflect on an immediate basis the benefits of gas costs reductions which have occurred since Mississippi's last regularly scheduled PGA filing effective March 1, 1986. It is claimed that the reductions are attributable primarily to changes in the cost of gas purchased from short-term, best efforts gas suppliers. The instant filing also reflects a purchased gas cost adjustment of one of Mississippi's pipeline suppliers, United Gas Pipe Line Company, also scheduled to be effective July 1, 1986 in Docket No. TA86-4-11-000.

Mississippi states that the overall cost impact on its juridictional customers is a decrease of approximately $22.5 million annually when compared to rates presently in effect. The impact of the instant filing on Mississippi's Rate Schedule CD-1 is an increase of $.267 per Mcf in Demand Charge D-1 and a decrease of $.2018 per Mcf in the commodity charge. The single part rate under Rate Schedule SGS-1 reflects an overall decrease of $.1760 per Mcf. There is no change in Demand Charge D-2.

Mississippi states that the approval of this out-of-phase PGA reduction is in the public interest, and will prevent the unnecessary accumulation of balances in Mississippi's Unrecovered Purchased Gas Cost Account. Mississippi has requested waivers of its PGA tariff provisions and the Commission's regulations to allow the rate reduction to occur as proposed.

Mississippi states that copies of its filing have been served on all jurisdictional customers and interested State Commissions.

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 §§ 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15538 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-133-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1986.

Take notice that on June 27, 1986, National Fuel Gas Supply Corporation (National) tendered for filing a minor change to its purchased gas adjustment (PGA) provisions. National proposes that the minor change be made effective August 1, 1986. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR § 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until July 30, 1986.

National, as a second tier pipeline, proposes to add a schedule to its PGA filing, requests the Commission waive § 154.38 and requests authorization to collect on a current basis charges National incurs in the transportation of third-party gas to its system by its pipeline suppliers under Order Nos. 436 *et al.* National further states that, in flowing through such transportation costs, it will file as part of its PGA filing a schedule showing: (i) the separate gas and transportation components of the involved purchases; (ii) the identity of the other pipelines involved; and (iii) the designation of the transportation rate schedules involved.

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, 385.214). All such motions or protests should be filed on or before July 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15539 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-451-000 and CI86-504-000]

Natural Gas Pipeline Company of America; Applications on Behalf of Producer-Suppliers of Natural Gas Pipeline Company of America for Limited-Term Abandonment and for a Limited-Term Certificate of Public Convenience and Necessity With Pregranted Abandonment

July 2, 1986.

Take notice that on June 9, 1986, as supplemented on June 25, 1986, Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148 (Applicant), filed in this proceeding applications pursuant to sections 7(b) and 7(c) of the Natural Gas Act. Applicant requests on behalf of its producer-suppliers an order (1) authorizing in Docket No. CI86-504-000 the partial, limited-term—and in certain instances permanent—abandonment of sales to Applicant for a three-year period from the date Natural accepts such authorization; and (2) authorizing in Docket No. CI86-451-000 a blanket certificate of public convenience and necessity with pre-granted abandonment authorizing the sale for resale in interstate commerce, by such producer-suppliers or their agents or resellers, of natural gas released by Applicant and for which the requested abandonment authorization is granted. Applicant states that any permanent abandonment would apply where Applicant deems it an essential element to a settlement with a particular producer and would take place only with the concurrence of such producer and upon notice to the commission. Applicant requests that any limited-term abandonment authorization be specifically subject to Applicant's right

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[3] 18 CFR 385.1101-.1117 (1985).

to recall such released volumes at its discretion. Applicant states that it is currently in the process of formulating an open-access program in response to Order No. 436 and that the requested authorizations would be essential to facilitate such a program. Applicant further states that it is experiencing a gas supply/demand imbalance and expects this imbalance to increase significantly once ceiling prices for low-cost gas increase as a result of Commission action in Docket No. RM86-3-000. Applicant states that approval of its requests will be a critical step in dealing with its supply-demand imbalance and the alleviation of its take-or-pay exposure, which Applicant estimates at $500-650 million or more by the end of 1986. Applicant states that its producer-suppliers' deliverability for 1987 in the following NGPA categories is estimated to be approximately 335 Bcf.

Category/Vintage	Quantity (Bcf)
104—post 1974	117.9
104—1973-1974 beinnium:	
Large producers	31.6
Small producers	0.7
104—repl./rec.:	
Large producers	32.2
Small producers	1.4
104—flowing:	
Large producers	86.7
Small producers	2.7
104—certain Permian Basin:	
Large producers	6.0
Small producers	0.5
104—minimum rate	22.9
106(a)	17.6
108	14.4
Total	334.6

In addition, Applicant requests that the Commission waive its Regulations under Parts 157 and 271 as to the establishment and maintenance of rate schedules.

Any person desiring to be heard or to make any protest with reference to said applications should, on or before July 18, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). 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. Persons wishing to become a party to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15503 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP78-85-002]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

July 3, 1986.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on June 30, 1986 tendered for filing Tenth Revised Sheet Nos. 2 through 38 to its FERC Gas Tariff, Original Volume No. 1-A.

Panhandle states that on February 8, 1980 the Commission approved a Stipulation and Agreement (Agreement) in the proceedings entitled *Village of Pawnee, Illinois, et al.* vs. *Panhandle Eastern Pipe Line Company*, in the subject docket. Under the terms of the Agreement, certain Small Customers as defined in Article II of the Agreement, are permitted to add new Priority 1 requirements up to 10 percent of their original annual base period volumes during the first twelve-month period and up to 8 percent of their original annual base period volumes in each succeeding twelve-month period that the Agreement is in effect. Article V of the Agreement requires the Small Customers to report to Panhandle changes in their estimated monthly and annual volumes, which changes are to be reflected as adjustments to the monthly base period volumes for each Small Customer. Tenth Revised Sheet Nos. 2 through 38 reflect these adjustments in the monthly base period for each Small Customer. Panhandle proposes an effective date of August 1, 1986.

Panhandle states that copies of this filing have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

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 Parts 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 July 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15540 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP78-430-010]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

July 3, 1986.

Take notice that on June 26, 1986, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

Tariff sheet	Proposed effective date
Third Revised Sheet Nos. 1588, 1590, 1591, and 1592.	Apr. 21, 1986.
Second Revised Sheet Nos. 1589, 1593, 1594, 1595, and 1596.	Apr. 21, 1986.
First Revised Sheet Nos. 1597 and 1598.	Apr. 21, 1986.
Original Sheet Nos. 1598-A and 1598-B.	Apr. 21, 1986.

Transco states that the subject tariff sheets reflect revisions to Transco's Rate Schedule X-171, which is a gas exchange agreement between Transco and Texas Eastern Transmission Corporation (Texas Eastern), dated May 23, 1978, as amended September 26, 1979, June 2, 1980, March 19, 1982, November 18, 1982, March 20, 1984 and June 28, 1984, and authorized by the Commission in a certificate of public convenience and necessity issued in Docket No. CP78-430 on September 25, 1978, as amended.

Transco and Texas Eastern made a number of changes in the agreement by the amendments dated March 19, 1982, November 18, 1982, March 20, 1984 and June 28, 1984, the most significant of which was the designation of a new Transco point of receipt from Texas Eastern and a new Transco point of delivery to Texas Eastern. On October 29, 1985, Transco and Texas Eastern filed a joint petition in the aforementioned proceeding to amend certificate to obtain authorization for the changes in the agreement.

On April 9, 1986, the Commission issued an order in Docket No. CP78-430-008 authorizing the changes.

Transco proposes that the revised tariff sheets be made effective April 21, 1986, the date the service authorized by the Commission's April 9, 1986 order commenced.

A copy of the instant tariff filing has been served upon Texas Eastern.

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 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before July 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15541 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP78-86 -002]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

July 3, 1986.

Take notice that Trunkline Gas Company (Trunkline) on June 30, 1986 tendered for filing Tenth Revised Sheet No. 21-C.8 to its FERC Gas Tariff, Original Volume No. 1.

Trunkline states that on February 8, 1980 the Commission approved a Stipulation and Agreement (Agreement) in the proceedings entitled *Kaskaskia Gas Company, et al.* vs. *Trunkline Gas Company*, in the subject docket. Under the terms of the Agreement, certain Small Customers as defined in Article II of the Agreement, are permitted to add new Priority 1 requirements up to 10 percent of their original annual base period volumes during the first twelve-month period and up to 8 percent of their original annual base period volumes in each succeeding twelve-month period that the Agreement is in effect. Article V of the Agreement requires the Small Customers to report to Trunkline changes in their estimated monthly and annual volumes, which changes are to be reflected as adjustments to the monthly base period volumes for each Small Customer. Tenth Revised Sheet No. 21-C.8 reflects these adjustments in the monthly base period for each Small Customer. Trunkline proposes an effective date of August 1, 1986.

Trunkline states that copies of this filing have been served on all customers subject to the tariff sheet and applicable state regulatory agencies.

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 Parts 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 July 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15542 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-4-33-000, 001]

El Paso Natural Gas Co.; Notice of Proposed Out-of-Period Change in Rates Pursuant to Purchased Gas Cost Adjustment

July 7, 1986.

Take notice that on June 30, 1986, El Paso Natural Gas Company ("El Paso") filed notice of an out-of-period change in rates for jurisdictional gas service rendered under rate schedules affected by and subject to Section 19, Purchased Gas Cost Adjustment Provision, of the General Terms and Conditions in El Paso's FERC Gas Tariff, First Revised Volume No. 1. The filing reflects a decrease of $.2552 per dth in the portion of El Paso's currently effective jurisdictional sales rates attributable to purchased gas cost. (The surcharge component of El Paso's currently effective rates is unaffected by the notice.)

To implement the $.2552 rate reduction, El Paso tendered for filing and acceptance the following revised sheets to its FERC Gas Tariff:

Tariff volume	Tariff sheet
First Revised Volume No. 1	Ninth Revised Sheet No. 100.
Third Revised Volume No. 2	Thirty-fourth Revised Sheet No. 1-D.
Original Volume No. 2A	Thirty-sixth Revised Sheet No. 1-C.

El Paso also tendered Fourth Revised Sheet No. 24 to its Original Volume No. 1-A Tariff to reflect the rate of $1.9333 as the fuel reimbursement charge payable under section 6 of Rate Schedules T-1 or T-2 in said Tariff by shippers electing to reimburse El Paso for fuel usage in monthly payments rather than in kind.

El Paso has requested waiver of its Tariff and all of the Federal Energy Regulatory Commission's rules and regulations as necessary to permit implementation of the rate change effective July 1, 1986, and states that copies of the filing have been served upon all of its interstate pipeline system customers and all interested state regulatory commissions.

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 §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before July 15, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15583 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-69-002]

Mid Louisiana Gas Co.; Compliance Tariff Filing

July 7, 1986.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on June 30, 1986 tendered for filing as part of First Revised Vol. No. 1 of its FERC Gas Tariff, the tariff sheets set forth hereunder:

Substitute Seventh Revised Sheet No. 1
Substitute Fifty-Fifth Revised Sheet No. 3a
Substitute Original Sheet No. 12e
Substitute Original Sheet No. 12f
Substitute Original Sheet No. 12g
Substitute Original Sheet No. 12h
Substitute Original Sheet No. 12i
Substitute Original Sheet No. 12j
First Revised Sheet No. 13
Original Sheet No. 26g
Original Sheet No. 26h
Original Sheet No. 26i
Original Sheet No. 33d
Original Sheet No. 33e
Original Sheet No. 33f
Original Sheet No. 33g

Original Sheet No. 33h
Original Sheet No. 33i
Original Sheet No. 33j
Original Sheet No. 33k
Original Sheet No. 33l
Original Sheet No. 33m

Mid Louisiana states that the filing of the tariff sheets is in compliance with the Commission's order issued May 29, 1986 in the above captioned docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before July 16, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15584 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-15-000, 001]

Mid Louisiana Gas Co.; Proposed Change in Rates

July 7, 1986.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on July 1, 1986, tendered for filing as a part of First Revised Volume No. 1 of its FERC Gas Tariff, Fifty-Sixth Revised Sheet No. 3a, Fourteenth Revised Sheet No. 3c, First Revised Sheet No. 26d.3 and First Revised Sheet No. 26d.4 to become effective August 1, 1986.

Mid Louisiana states that the purpose of the filing of Fifty-Sixth Revised Sheet No. 3a is to reflect a purchased gas cost current adjustment and a purchased gas cost surcharge resulting in a rate of 267.24¢ per Mcf.

This filing is being made in accordance with Section 19 of Mid Louisiana's FERC Gas Tariff, and that the purchased gas cost current adjustment reflects rates payable to Mid Louisiana's suppliers during the period August 1, 1986 through January 31, 1987.

Copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before July 15, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15585 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-55-003]

Mountain Fuel Resources, Inc.; Rate Change

July 7, 1986.

Take notice that Mountain Fuel Resources, Inc. (MFR) on June 30, 1986, tendered for filing and acceptance tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, as follows:

Substitute Third Revised Sheet No. 12
Substitute Second Revised Sheet No. 61
Substitute Third Revised Sheet No. 62
Substitute First Revised Sheet No. 65
Substitute Original Sheet No. 65-A
Substitute Original Sheet No. 65-B

MFR states that these sheets, which are filed in compliance with the Commission's May 30, 1986, letter order in these dockets and Part 154 of the Commission's Regulations, provide for rates applicable to service which is subject to its Purchased Gas Adjustment (PGA) provision.

MFR further states that the purpose of this filing is to: (1) Comply with the conditions of the Commission's May 30, 1986, letter order, (2) incorporate the proper non-gas component of MFR's Rate Schedule CD-1 rates as established in Docket No. RP86-7, and (3) update MFR's Base Cost of Purchased Gas as Adjusted to reflect: (a) a revised method of accounting for in-kind reimbursements related to shrinkage associated with two processing plants on MFR's system, and (b) the effect on gas costs of contract renegotiations and exercise of market-out provisions that were effected prior to June 1, 1986, but not included in MFR's May 1, 1986, filing. MFR's Substitute Third Revised Sheet No. 12 reflects a commodity base cost of purchased gas as adjusted of $2.51596/Dth, which is $0.07536/Dth lower than the rate originally proposed in the May 1, 1986, PGA filing.

MFR has requested any necessary waivers of the Commission's Regulations to allow the tendered tariff sheets to become effective as proposed, and states that it has provided a copy of the filing to all intervenors in the proceeding and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 15, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15586 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-4-16-000, 001]

National Fuel Gas Supply Corp.; Proposed Tariff Changes

July 7, 1986.

Take notice that on July 1, 1986, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Substitute Sixth Revised Sheet No. 4 to be effective August 1, 1986.

National states that the purpose of Second Substitute Sixth Revised Sheet No. 4 is to reflect a net decrease of 56.41¢ per Dth. This change consists of a decrease in current purchase gas cost of 41.40¢ per Dth, and an increase in the purchase gas cost surcharge credit adjustment of 15.01¢ per Dth.

National states that copies of this filing were served upon the company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before July 15, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15587 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-4-18-000, 001]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

July 7, 1986.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on June 30, 1986 tendered for filing Fourth Revised Sheet No. 10, Fourth Revised Sheet No. 10A, Third Revised Sheet No. 14 and Substitute First Revised Sheet No. 113 to its FERC Gas Tariff, Original Volume No. 1.

Fourth Revised Sheet No. 10, Fourth Revised Sheet No. 10A and Third Revised Sheet No. 14 reflect an increase of purchased gas costs pursuant to the Purchased Gas Adjustment clause of Texas Gas's FERC Gas Tariff. These tariff sheets are proposed to be effective August 1, 1986. Substitute First Revised Sheet No. 113, proposed to be effective February 1, 1986, modifies the definition of Current Month Purchased Gas Cost to eliminate the effect of out-of-balance concurrent exchange transactions as required by FERC Letter Order issued April 18, 1986, in Docket Nos. TA86-3-18-003 and TA86-3-18-004.

Copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

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 July 15, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15588 Filed 7-9-86; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-487]

First Federal Savings and Loan Association of Clovis, Clovis, NM; Final Action; Approval of Conversion Application

Dated: May 20, 1986.

Notice is hereby given that on May 7, 1986, the Office General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Clovis, Clovis, New Mexico, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Dallas, 500 E. John Carpenter Freeway, P.O. Box 619026, Dallas, Fort Worth, Texas 75261-9026.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-15529 Filed 7-9-86; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-488]

Home Savings and Loan Association Durham, NC; Final Action; Approval of Conversion Application

Dated: July 1, 1986.

Notice is hereby given that on May 1, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Savings and Loan Association, Durham, North Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street NW., Washington, DC 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-15530 Filed 7-9-86; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-486]

Tower Federal Savings and Loan Association, South Bend, IN: Final Action; Approval of Conversion Application

Dated: May 8, 1986

Notice is hereby given that on May 2, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Tower Federal Savings and Loan Association, South Bend, Indiana for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW, Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Indianapolis, Post Office Box 60, Indianapolis, Indiana 46206.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-15531 Filed 7-9-86; 8:45 am]

BILLING CODE 6720-01-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 pursuant to section 15 of the Shipping Act, 1916, and 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 protests or 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 and protests are found in §§ 522.7 and/or 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.

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.: 018–010436–002.

TITLE: United States Lines/Matson Navigation Company, Connecting Carrier Agreement.

PARTIES: Matson Navigation Company, Inc., United States Lines, Inc.

SYNOPSIS: The proposed amendment would reflect United States Lines' discontinuance of service by water from U.S. Pacific to U.S. Atlantic Coast ports.

FILING PARTY: David F. Anderson, Esq., Matson Navigation Company, 333 Market Street, P.O. Box 7452, San Francisco, California 94120.

Dated: July 7, 1986.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 86–15563 Filed 7–9–86; 8:45 am]

BILLING CODE 6730–01–M

Exculpatory Provisions in Marine Terminal Agreements and Leases; Filing of Petition

July 7, 1986.

Notice is hereby given that a petition has been filed by the Master Contracting Stevedore Association of the Pacific Coast, Inc. (MCSA) requesting the Commission to promulgate a rule prohibiting inclusion of exculpatory provisions in marine terminal agreements and leases. Specifically, MCSA petitions, in the alternative for:

(1) A separate rulemaking which would prohibit exculpatory provisions in marine terminal agreements and leases;

(2) Extending the Commission's current Docket No. 86–15—*Exculpatory Provisions in Marine Terminal Tariffs* to encompass agreements and leases; or

(3) Consolidating the requested rulemaking with Docket No. 86–15.

In order for the Commission to make a thorough evaluation of the petition, including the three possible alternatives outlined above, interested persons are requested to submit views, arguments or data on the petition no later than August 4, 1986.

Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC, 20573, in an original and 15 copies. Responses shall also be served on counsel for MCSA: Dennis Lindsay, Esq., Lindsay, Hart, Neil & Weigler, Suite 1800, 222 SW. Columbia, Portland, Oregon 97201–6618.

Copies of the petition are available for examination at the Washington, DC office of the Commission, 1100 L Street NW., Room 11101.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 86–15566 Filed 7–9–86; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Request for Comments and Secondary Data on Erysipelothrix Infections; National Institute for Occupational Safety and Health

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Public Health Service (PHS), HHS.

ACTION: Request for comments and secondary data.

SUMMARY: NIOSH is requesting comments and secondary data from all interested parties concerning erysipeloid in leather workers, and the prevalence of *Erysipelothrix* species in leather and animal products in the United States. Interested parties may submit medical case reports or data collected about the prevalence of *Erysipelothrix* organisms in slaughterhouses, tanneries, fisheries, or other industries where workers may come in contact with animal products. These data will be used by NIOSH to evaluate risks of erysipelothrix infections, and to determine the need for preventive health measures and additional research.

DATE: Comments concerning this notice should be submitted by September 8, 1986.

ADDRESS: Any information, comments, suggestions, or recommendations should be submitted in writing to: Mr. Ralph Zumwalde, Assistant Chief, Document Development Branch, Division of Standards Development and Technology Transfer, NIOSH, CDC, 4676 Columbia Parkway, C–16, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Newman, Division of Standards Development and Technology Transfer, NIOSH, CDC, 4676 Columbia Parkway, C–30, Cincinnati, Ohio 45226, (513) 533–8312 or FTS 684–8312.

SUPPLEMENTARY INFORMATION: Under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.), NIOSH is directed to gather information for improving occupational safety and health. NIOSH has received a report of an outbreak of erysipeloid, a skin infection, among leather workers in the Soviet Union. Occupational outbreaks of erysipeloid have been previously reported among fish cannery employees, but NIOSH is unaware of reports of cases among workers handling animal hides or leather in the United States.

In humans, *Erysipelothrix* infections are usually manifest as painful, raised, purplish papules, which enlarge to form a characteristic, painful, purplish-red lesion with associated lymphangitis and lymphadenitis. A low-grade fever and joint pains may also develop. In animals, erysipelothrix occasionally causes arthritis and rarely may cause bacterial endocarditis, an infection of the inside of the heart.

NIOSH has no objective information on either the frequency of this type of infection or the prevalence of the organisms in the United States. Therefore, to determine whether preventative recommendations for health protection or further research are in order, NIOSH is interested in obtaining existing and available materials, e.g., reports and research findings on the following:

1. *Erysipelothrix* infections among leather workers, slaughterhouse workers, poultry plant workers, rendering plant workers, fish cannery workers, or other places of employment where workers might come in contact with uncooked animal products.

2. Bacteriologic studies or epidemiologic surveys performed at those types of places of employment described above.

3. Outbreaks of other types of infections among workers, that may be attributable to their work environment, in the types of employment described above.

All information received in response to this notice, except that designated as trade secret and protected by section 15 of the Occupational Safety and Health Act, or personal identifying information contained in medical case reports or data, will be available for public examination and copying at the above address.

Dated: July 3, 1986.

L.W. Sparks,

Executive Officer, National Institute for Occupational Safety and Health.

[FR Doc. 86–15546 Filed 7–9–86; 8:45 am]

BILLING CODE 4160–19–M

Cooperative Agreements; Acquired Immunodeficiency Syndrome (AIDS)—HTLV-III/LAV Infection in American Blood Donors; Program Announcement and Notice of Availability of Funds for Fiscal Year 1986

The Centers for Disease Control (CDC) proposes to assist the American Red Cross through a Cooperative Agreement in an epidemiologic study to determine the incidence and extent of infection with Human T-Lymphotropic Virus, Type III/Lymphadenopathy-Associated Virus (HTLV-III/LAV), the causative agent of AIDS, in American blood donors. The Catalog of Federal Domestic Assistance number is 13.118.

Program Objectives

The objectives of this cooperative agreement are to:

(1) Assist the blood donation community in determining and monitoring the incidence and extent of spread of HTLV-III/LAV infection among American blood donors including the incidence of new infection among those who have had a previous negative HTLV-III/LAV antibody test.

(2) Assist in the long term followup evaluation of donors with previous "false positive" serologic tests.

(3) Assist in the analysis of the demographic characteristics of donors infected with HTLV-III/LAV to strengthen the effectiveness of the donor deferral and screening process.

Authority

This program is authorized under section 301(a) of the Public Health Service Act, as amended.

Justification

The American Red Cross (ARC) is the only major collector of blood for transfusion in the United States, with about six million units collected annually. This number comprises approximately half the nation's blood supply. The other half is collected by numerous independent local blood banks and the military. Only ARC is national in scope, with collection in at least parts of most states in the continental United States. Because the prevalence of infection, and especially the incidence of new infection, in blood donors is low (due to the self-deferral process), very large numbers of donors need to be studied to obtain significant results. Additionally, HTLV-III/LAV infection levels vary considerably by geographic area. It is essential to obtain HTLV-III/LAV infection data from across the total USA. There is no other known organization that has the potential to conduct a nationwide study which will provide results and information that eventually can be used by all collectors of blood.

Availability of Funds

It is expected that approximately $300,000 will be available in Fiscal Year 1986 to fund one award. The award will be funded with 12-month annual budget periods with a 3-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives, and on the availability of funds. The funding estimate outlined above may vary and is subject to change.

Reviews

Application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information may be obtained from Nancy Bridger, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 262-6575 or FTS 236-6575.

Technical information may be obtained from Timothy Dondero, M.D., AIDS Program, CID, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329-3472, FTS: 236-3472.

Dated: July 2, 1986.

William E. Muldoon,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 86-15543 Filed 7-9-86; 8:45 am]

BILLING CODE 4160-18-M

Cooperative Agreements; Acquired Immunodeficiency Syndrome (AIDS)—Epidemiologic Study of Recipients of Blood Components From Donors Subsequently Found Seropositive for Antibody to HTLV-III/LAV in a Blood Bank Screening Program; Program Announcement and Notice of Availability of Funds for Fiscal Year 1986

The Centers for Disease Control (CDC) proposes to assist the American Red Cross—Atlanta Region through a cooperative agreement to continue to conduct an epidemiologic study of recipients of blood from donors subsequently found seropositive for antibody to HTLV-III/LAV in a blood bank screening program. The Catalog of Federal Domestic Assistance number is 13.118.

Program Objectives

The objectives of this cooperative agreement are to:

(1) Assist blood banking centers to determine the risk of HTLV-III/LAV infection in a cohort of persons transfused with blood or blood products of donors subsequently found reactive on HTLV-III/LAV ELISA testing of two or more serum specimens.

(2) Assist in determining if the results of the (a) ELISA assay, (b) Western blot assay, and (c) HTLV-III/LAV culture of the donor may be predictive of the degree for risk of HTLV-III/LAV transmission to previous recipients.

Authority

This program is authorized under sections 301(a), 304(a), 306(b), and 308(d) of the Public Health Service Act, as amended.

Justification

The Atlanta Red Cross initiated this project in September 1985 as a result of a competitive solicitation for application. They were the only applicant for this study when it was published in the **Federal Register** in July 1985 (50 FR 30295). To date, they have identified a cohort of 50 recipients of transfused blood from infected donors and, based upon results, there is an urgent need to expand the cohort to approximately 100 such persons. It has become obvious during the current study that it is important to expand and follow this cohort for longer than the one-year period originally determined. The additional cohort members and extending the time period to three years will enable the Red Cross to obtain more detailed information on the prevalance and risk factors for HTLV-III/LAV infection among infected transfused recipients. The consideration of other collaborators at this time would mean that additional start-up costs for replicating this cohort would be reincurred and result in a delay of the study for 10 to 12 months.

Availability of Funds

It is expected that approximately $100,000 will be available in Fiscal Year 1986 to fund one award. The award will be funded with 12-month annual budget periods with a 3-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives, and on the availability of funds. The funding estimate outlined above may vary and is subject to change. No other applications are being accepted in FY 1986 for this program.

Reviews

Application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information may be obtained from Marsha Driggans, Grants Management Office, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 262-6575 or FTS 236-6575.

Technical information may be obtained from John W. Ward, M.D., AIDS Program, CID, Centers for Disease Control, Atlanta, Georgia 30333, Telephone (404) 329-3472, FTS 236-3472.

Dated: July 2, 1986.

William E. Muldoon,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 86-15544 Filed 7-9-86; 8:45 am]

BILLING CODE 4160-18-M

Cooperative Agreements; Acquired Immunodeficiency Syndrome (AIDS)—Surveillance and Associated Epidemiologic Investigations; Program Announcement and Notice of Availability of Funds for Fiscal Year 1986

Introduction

The Centers for Disease Control (CDC) announce the availability of supplemental funds for Fiscal Year 1986 for competitive applications to existing cooperative agreements for surveillance and assocated epidemiologic investigations of acquired immunodeficiency syndrome (AIDS) to expand surveillance to determine the extent to which suspected AIDS patients are being presumptively diagnosed (i.e., by methods other than those required by the case definition for national reporting) and to determine the likelihood that presumptively diagnosed patients have AIDS. The Catalog of Federal Assistance number is 13.118.

Background

AIDS continues as a major public health problem in the United States. Through May 1986, more than 21,000 cases have been reported and more than 11,500 persons have died from AIDS. Estimates suggest that between 500,000 and one million persons in the United States are infected with human T-lymphotropic virus type III/lymphadenopathy-associated virus (HTLV-III/LAV), the etiologic retrovirus that causes AIDS. However, only a small percentage of infected individuals each year develop the severe manifestations of disease included in the case definition for national reporting.

The surveillance definition of AIDS used for national reporting has proven to be extremely valuable in providing useful data on disease trends because it is precise, consistently interpreted, and highly specific. However, the surveillance case definition requires laboratory or tissue confirmation of the opportunistic diseases (e.g., Pneumocystis or toxoplasma infection, Kaposi's sarcoma). Some patients may have AIDS and yet not qualify for being reported as cases because the methods used to diagnose their opportunistic disease(s) were less rigorous than those required by the case definition. This presumptive diagnosis may result in underestimation of the true number of AIDS cases. Conversely, if the presumptive methods used are less reliable, persons counted as AIDS patients may not really have AIDS.

Information Specific to Supplemental Surveillance Project

A. Purpose

The purpose of this surveillance project is to provide assistance to State and local health departments in evaluating the degree to which AIDS is being diagnosed presumptively without definitive diagnostic tests required to meet the AIDS case definition for national reporting.

B. Program Objectives

The objectives of this supplemental cooperative agreement are to:

1. Assist State and/or major city health departments conducting active surveillance for acquired immunodeficiency syndrome (AIDS) in determining the extent to which suspected AIDS patients are being presumptively diagnosed.

2. Assist in determining the likelihood that presumptively diagnosed AIDS patients really have AIDS as specified in the case definition for national reporting.

3. Assist in determining reasons for presumptive diagnoses by methods other than those required by the case definition and the impact, positive or negative, on reporting.

Authority

This program is authorized under sections 301(a), 304(a), 306(b), and 308(d) of the Public Health Service Act, as amended.

Eligibility Requirements

Eligible applicants for this program are only those official public health agencies of State and local governments including the District of Columbia, and the Commonwealth of Puerto Rico which have existing cooperative agreements for the active surveillance of AIDS and have reported a minimum of 200 AIDS cases meeting the CDC case definition.

Cooperative Activities

The collaborative and programmatic involvement of CDC and the recipient of funds are as follows:

1. Recipient Activities

a. Design and implement an innovative short-term surveillance study (approximately 120 days) to determine the degree to which suspected AIDS patients are presumptively diagnosed, including a method(s) for determining to the extent possible whether presumptively diagnosed AIDS patients really have AIDS.

b. Maintain a current central case registry from which comparisons between presumptively diagnosed patients and patients meeting the case definition for national reporting can be made.

c. Analyze data to determine the reasons for presumptive diagnosis and the impact on reporting.

d. Collaborate with CDC in analyzing the data.

e. Publish in appropriate media results of these investigations.

2. Centers for Disease Control Activities

a. Collaborate in the design and implementation of the study.

b. Assist in analyzing study results.

c. Collaborate in the presentation and dissemination of study results.

Availability of Funds

It is expected that approximately $100,000 will be available in Fiscal Year 1986 to fund two to four supplemental awards of approximately $25,000 to $50,000 each. Funds are to support projects to be performed during the applicant's current budget period of the existing surveillance Cooperative Agreement. No other applications will be accepted.

Type of Assistance

The awards resulting from the announcement will be supplements to existing cooperative agreements.

Applications

1. Copies—Place of Submission

The original and two copies of the application should be submitted on Form PHS 5161–1 (revised 3–79) on or before July 14, 1986: Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Room 321, 255 East Paces Ferry Road, Atlanta, Georgia 30305.

Application forms should be available in the institution's business office or from the above address.

2. Deadlines

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 should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

3. Late Applications

Applications which do not meet the criteria in either paragraph 2a or 2b immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

4. Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

5. Content

Applicants should consider a comprehensive proposal with the major focus on hospital-based surveillance, but that might also include ancillary components such as death certificates, HTLV–III/LAV antibody test results, etc. Innovative approaches might include: hospital discharge summary abstract reviews of "AIDS" patients with multiple hospitalizations in which AIDS was diagnosed presumptively during an earlier hospitalization and confirmed by an appropriate diagnostic method during a subsequent hospitalization—this approach might be done retrospectively or prospectively; reviews of death certificates and autopsy results which confirm the diagnosis of AIDS in patients who were previously presumptively diagnosed; and/or review of existing laboratory data which show discordant results by different tests (e.g., induced sputum and bronchoscopy for *Pneumocystis carinii* pneumonia).

The application must include a narrative which details the following:

a. The background and need for project support including information that relates to factors by which the application will be evaluated.

b. The objectives of the proposed project which are consistent with the purpose of the cooperative agreement and which are measurable and time-phased.

c. The methods that will be used to accomplish the objectives of the study.

d. The methods that will be used to evaluate the success of the study.

e. The methods that will be used to ensure confidentiality of records.

f. Fiscal information pursuant to utilization of awarded funds in a manner consistent with the purpose and objectives of the project.

g. Any other information that will support the request for assistance. Cooperative agreement funds may be used to support personnel and to purchase supplies, services, and computer equipment directly related to determining the levels of presumptive diagnoses among AIDS patients. Funds may not be used to supplant funds supporting existing AIDS activities provided by the applicant or to support construction costs.

Review Criteria

Applications will be reviewed and evaluated according to the following criteria:

a. The applicant's understanding of the AIDS problem and the purpose of the surveillance cooperative agreement and the supplement.

b. The feasibility of the proposed study.

c. The establishment of objectives which are consistent with the stated purpose of the cooperative agreement and which are specific, measurable and time-phased.

d. The qualifications and time allocation of the proposed staff and a description of how the project will be administered.

e. A proposed schedule for accomplishing the activities of the cooperative agreement supplement, including time frames and an assurance that any personnel hirings required for the study will not compromise proposed time frames.

f. Details of how the study will be implemented including a description of the State/local reporting requirements which permit surveillance of AIDS not meeting the case definition for national reporting, the use of the central case registry in this study, and how investigation of this phenomenon will be conducted.

g. The quality of the applicant's proposed plan to identify current levels of presumptive diagnosis and treatment of AIDS.

h. Demonstration of close collaboration and working relationships, including letters of support, between the public health department and those medical institutions diagnosing and treating patients with AIDS/suspected AIDS, and any persons (e.g., medical examiners, nosologists, and pathologists), organizations, etc. providing data (e.g., death certificates, autopsy reports, hospital discharge summary abstracts and medical records) for the study.

i. The capability or plan of the applicant to maintain maximum confidentiality of all patient information.

j. The extent to which the budget is reasonable and consistent with the intended use of the supplemental funds.

Information

Information on application procedures, copies of application forms, and other material may be obtained from Marsha Driggans, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, or by calling (404) 262–6575 or FTS 236–6575.

Technical assistance may be obtained from E. Thomas Starcher, AIDS Program, CID, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329–3472, FTS: 236–3472.

Dated: July 2, 1986.

William E. Muldoon,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 86–15545 Filed 7–9–86; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[FDA–225–86–8400]

Memorandum of Understanding With the French Ministry of Social Affairs and National Solidarity and the Food and Drug Administration

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding (MOU) with the French Ministry of Social Affairs and National Solidarity acknowledging the mutual interests and responsibilities of these agencies in developing actions to contribute

toward improving the quality of medicines in international commerce.

DATE: The agreement became effective March 18, 1986.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: In accordance with § 20.108(c) (21 CFR 20.108(c)), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing the following memorandum of understanding:

Memorandum of Understanding Between the French Ministry of Social Affairs and National Solidarity Office of Pharmaceuticals and Medicines and the U.S. Food and Drug Administration Department of Health and Human Services

I. Purpose

The Food and Drug Administration of the Department of Health and Human Services and the Office of Pharmaceuticals and Medicines of the Ministry of Social Affairs and National Solidarity fully acknowledge that collaboration and cooperation will, to their mutual benefit, further science and technology in the interest of public health, contribute towards improving the quality of medicines in international commerce, and strengthen the bonds of friendship between the United States and France.

II. Background

Very often the research data on experimental toxicology submitted to the governmental authority of one of the parties to this agreement in support of a request for approval to market a pharmaceutical product for human consumption are based on studies conducted by laboratories in the country of the other party to the agreement.

This agreement reflects the desire of the appropriate agencies of the United States and France to ensure the quality and the accuracy of such data.

At the present time, the United States and France each have regulations governing good laboratory practice and inspectional personnel specializing in this area, and the French and American regulations are quite similar and entirely compatible. The Council of the Organization for Economic Cooperation and Development has encouraged its member countries to conclude agreements on the mutual recognition of data.

This agreement will make it possible to reduce the number of animals used in experiments by eliminating the need to repeat the experiment in the other country.

III. Substance of Agreement

Considering the advantages that will accure to both their countries, the two agencies have agreed as follows:

Article 1. The parties to this agreement undertake to provide, as promptly as possible, information on an inspection of a toxicology laboratory or a study audit whenever, the other party so requests.

Article 2. The inspectors of the Food and Drug Administration will rely on the texts relating to Good Laboratory Practice for Nonclinical Laboratory Studies (21 CFR Part 58) in evaluating the laboratories and the data from studies conducted in their country.

The inspectors of the Office of Pharmaceuticals and Medicines of the Ministry of Social Affairs and National Solidarity will rely on the texts of the Instruction of September 3, 1984,[1] relative to good laboratory practice in evaluating the laboratories and the data from studies conducted in their country.

Each party to this agreement will inform the other of changes in their respective good laboratory practice regulations or to their respective inspection programs.

Article 3. Each party to this agreement agrees that studies conducted in accordance with respective standards of good laboratory practice promulgated by either country are to be acceptable to both parties for evaluation of product applications submitted for approval.

Article 4. Should a special problem arise, at the request of either party a joint inspection will, on an exceptional basis, be organized by the two offices.

Article. 5. Ongoing cooperation will be developed between the Food and Drug Administration and of the Office of Pharmaceuticals and Medicines in such a way as to strengthen the ties between the two agencies, to increase exchanges, and to advance still further the quality of nonclinical experimentation in both countries.

Article 6. Each year, and as the need arises, the Food and Drug Administration and the Office of Pharmaceuticals and Medicines will examine the issues raised by the implementation of this agreement, evaluate the progress achieved, and determine the work to be done.

[1] And of the Instruction of May 31, 1983.

IV. Liaison

The parties will appoint the following representatives as liaison officers for all communications on issues relating to this agreement:

A. For the Office of Pharmaceuticals and Medicines: Chief, Pharmaceutical Inspection Unit, (currently Mr. Jacques Cordonnier), 1 Place Fontenoy, 75007 Paris, 467–55–44, Extension 52–06.

B. For the Food and Drug Administration: Director, Division of Compliance Policy, (currently Mr. Ernest Brisson), Office of Regulatory Affairs, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2390.

V. Duration of Agreement

This agreement shall become effective upon acceptance by both parties. It may be amended by mutual written consent or terminated by either party upon written notice to the other party.

Approved and Accepted for the Office of Pharmaceuticals and Medicines

By: s/Pr. J. Dangoumau

Title: Le Directeur de la Pharmacie et du Médicament

Date: March 18, 1986

Approved and Accepted for the Food and Drug Administration

By: s/Joseph P. Hile

Title: Associate Commissioner for Regulatory Affairs

Date: March 7, 1986

Dated: July 2, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–15498 Filed 7–9–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision and Deletion of Notices 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 proposes to delete one and revise ten notices describing systems of records maintained by the Bureau of Land Management. Except as noted below, all changes being published are editorial in nature, clarify and update existing statements, and reflect organization, address, and other miscellaneous administrative revisions which have occurred since the previous publication of the material in the **Federal Register**. The ten notices being revised, which are published in their entirety below, are:

1. Range Management System—Interior, BLM–2 (previously published on December 8, 1982 (47 FR 55318)).
2. Alaska Native Claims—Interior, BLM–5 (previously published on April 11, 1977 (42 FR 19111)).
3. Mineral Surveyor Appointment File—Interior, BLM–6 (previously published on April 11, 1977 (42 FR 19111)).
4. Land and Resource Case File—Interior, BLM–7 (previously published on December 8, 1982 (47 FR 55319)).
5. Safety Management Information—Interior, BLM–13 (previously published on December 8, 1982 (47 FR 55321)).
6. Travel—Interior, BLM–21 (previously published on December 8, 1982 (47 FR 55323)).
7. Financial Management—Interior, BLM–22 (previously published on December 8, 1982 (47 FR 55325)).
8. Copy Fee Deposit—Interior, BLM–24 (previously published on December 8, 1982 (47 FR 55325)).
9. Adopt a Wild Horse—Interior, BLM–28 (previously published on December 8, 1982 (47 FR 55325)).
10. Recordation of Mining Claims—Interior, BLM–29 (previously published on December 8, 1982 (47 FR 55326)).

One notice titled "Mining Claim Title Clearance—Interior, BLM–1, previously published on April 11, 1977 (42 FR 19110), is being deleted from the inventory of the Department's Privacy Act systems of records notices. Due to new recordkeeping procedures in the Bureau of Land Management, the records formerly described in BLM–1 are now covered under the system notice for BLM–29 (published below).

In all ten notices published below, 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 (OMB) in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act. Also, in all ten 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.

The existing routine disclosure statements pertaining to consumer reporting agencies in BLM–2, BLM–7, BLM–13, BLM–21, BLM–22, BLM–28, and BLM–29 are being removed from the "routine use" sections of the notices, and are being published separately as prescribed in guidelines issued by OMB on March 30, 1983, July 5, 1983, and July 22, 1983, regarding the Debt Collection Act of 1982 (Pub. L. 97–365). Also, in all ten notices, the existing statements regarding routine disclosures to congressional offices are clarified.

In the notice describing copy fee deposits (BLM–24), the existing disclosure to consumer reporting agencies is deleted. Also, a new compatible routine disclosure to the public is added to the notice describing mining claim records (BLM–29).

Part XI of the Appendix containing addresses of facilities of the Department which pertains to the Bureau of Land Management (previously published on April 11, 1977 (42 FR 18995–18997)) is revised and updated. The revised Part XI of the Appendix also is published below.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment. Therefore, written comments on these proposed changes can be addressed to the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, D.C. 20240. Comments received on or before August 11, 1986 will be considered. The notices shall be effective as proposed without further notice at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: June 30, 1986.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

INTERIOR/LLM–2

SYSTEM NAME:

Range Management System—Interior, BLM–2.

SYSTEM LOCATION:

U.S. Department of the Interior, Bureau of Land Management, Denver Federal Center, Bldg. 50, Denver, Colorado 80225.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals owning grazing leases and permits issued by BLM.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record contains the lessee's or permittee's name, address, description of the area, the Bureau's assigned case file number, and information on payment due as a result of authorized or unauthorized use.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 315, et seq.

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 identify the permittees and lessees, authorized to graze lands administered by the Bureau of Land Management. (b) To print statements of grazing preference, grazing authorizations, billings for grazing fees due, and other reports, and (c) to provide information concerning the grazing permittees and lessees for administrative and public use. Disclosures outside the Department of the Interior may be made, (1) to a member of the general public in response to a specific request for pertinent information, (2) 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, (3) of information indicating a violation or potential violation of a statute, regulation, rule, order, permit, or lease, 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, permit, of lease, (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer Mag-tape and/or Manual Index.

RETRIEVABILITY:

Indexed by name of lessee.

SAFEGUARDS:

In accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL

BLM Manual(s) 1271 and H–1272–1 Mag-Tape Index: Category "Q", item 10–d. Manual Index: Category 2, item 22: Destroyed when superseded or no longer needed for administrative purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Rangeland Management, U.S. Department of the Interior, Bureau of Land Management, (WO–220), 18th and C Sts, NW., Washington, D.C. 20240.

NOTIFICATION PROCEDURES:

To determine whether the records are maintained on you in this system, write to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your records write to the System Manager. Describe as specifically as possible the records sought. If copies are desired, indicate the maximum you are willing to pay. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

To request corrections or the removal of material from your files, write the System Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Lessees.

INTERIOR/LLM–5

SYSTEM NAME:

Alaska Native Claims—Interior, BLM–5.

SYSTEM LOCATION:

Alaska State Office, U.S. Department of the Interior, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants under the Alaska Native Claims Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record contains the claimants name, address, description of the area claimed and the Bureau's assigned case file number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Alaska Native Claims Act, Pub. L. 92–203.

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 process claims for rights and interest in National Resource lands, (b) for recordation of adjudicative actions pertaining to the claims and (c) to index documentations in case files supporting administrative actions and notations made on land status records. Disclosures outside the Department of the Interior may be made (1) to a member of the general public in response to a specific request for pertinent information, (2) to appropriate federal agencies when concurrence or supporting information is required prior to granting a right or interest in National Resource lands and resources, (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, 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, (5) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer, Mag-tape.

RETRIEVABILITY:

Indexed by name of claimant, case number, and land description.

SAFEGUARDS:

In accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

Disposal is unscheduled at the present time. Determination of the retention and disposition is pending approval of the Archivist of the U.S.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Management Service, U.S. Department of the Interior, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

NOTIFICATION PROCEDURE:

To determine whether the records are maintained on you in this system, write to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your records write to the System Manager. Describe as specifically as possible the records sought. If copies are desired, indicate the maximum you are willing to pay. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

To request corrections or the removal of material from your files, write the System Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Claimants, BIA, and BLM determinations.

INTERIOR/LLM–6

SYSTEM NAME:

Mineral Surveyor Appointment File—Interior, BLM–6.

SYSTEM LOCATION:

Division of Cadastral Survey (720), U.S. Department of the Interior, Bureau of Land Management, 18th & C Streets, NW., Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for a Mineral Surveyor appointment and holders of an appointment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the name and biographical information for qualification of each applicant and data on the granting or rejection of each application for appointment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

30 U.S.C. 39.

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 process applications for appointment and (b) to issue notices of appointments. Disclosures outside the Department of the Interior may be made (1) to a member of the general public in response to a request for identification of appointment mineral surveyors within a particular state, (2) to Federal, State or local agencies when necessary to obtain information relevant to the application for appointment, (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, (5) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual, file folders arranged alphabetically by name.

RETRIEVABILITY:

Indexed by name of applicant of appointee.

SAFEGUARDS:

In accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

File destroyed fifty years after administrative need has been completed, in accordance with BLM Manual 1271, Category H, Item No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Cadastral Survey (720) U.S. Department of the Interior, Bureau of Land Management, 18th & C Streets, NW., Washington, DC 20240.

NOTIFICATION PROCEDURE:

To determine whether the records are maintained on you in this system, write to the Systems Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your records write to the Systems Manager. Describe as specifically as possible the records sought. If copies are desired, indicate the maximum you are willing to pay. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

To request corrections or the removal of material from your files, write the Systems Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Applicants.

INTERIOR/LLM-7

SYSTEM NAME:

Land and Resource Case File—Interior, BLM–7.

SYSTEM LOCATION:

Bureau of Land Management State and/or District Offices. See Appendix XI for a listing.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who filed applications under appropriate statutes from national resource lands (public lands) or the resources in or on such lands and individuals from whom an interest has been acquired.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain the applicant's name, address, qualification under the statute, regulations involved, and other detailed information required by the regulations under which the application is filed, i.e., the extent of oil and gas or other mineral holdings in national resource lands, and information on payments due as a result of lease and/or extraction of minerals or oil from the leased lands.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Land Policy and Management Act of 1976, and the various statutes under which applications are filed as listed in the regulations in Chapter II of Title 48 of the Code of Federal Regulations.

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 process applications for rights and interests in National Resource lands, (b) for recordation of adjudicative actions pertaining to the application, (c) to index documentations in case files supporting administrative actions and notations made on land status records, and (d) for recordation of acquisitions. Disclosures outside the Department of the Interior may be made, (1) to appropriate Federal agencies when concurrence is required prior to granting or acquiring a right or interest in lands or resources, (2) to a Federal, State or local agencies or a member of the general public in response to a specific request for pertinent information, (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 of litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevent 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 of 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, (5) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual index.

RETRIEVABILITY:

Indexed by name of claimant and serial number.

SAFEGUARDS:

In accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

BLM Manual 1271, Category L, item 2, effective January 1, 1975. Transfer to FRC all cards dated prior to 1960. Thereafter, close existing file every 15 years and transfer to FRC 15 years later. Retain 30 years local. Records will remain in the FRC permanently for Archival retention.

SYSTEM MANAGER(S) AND ADDRESS:

State Directors, U.S. Department of the Interior, Bureau of Land Management State Offices. See Appendix XI for addresses.

NOTIFICATION PROCEDURES:

To determine whether records are maintained on you in this system, write to the System Manager or to the offices cited under Records Location. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your records write to the System Manager or to the offices cited under Record Location. Describe as specifically as possible the records sought. If copies are desired, indicate the maximum you are willing to pay. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

To request corrections or the removal of material from your files, write the System Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Applicants, investigations conducted by BLM or other offices of the Department.

INTERIOR/LLM-13

SYSTEM NAME:

Safety Management Information—Interior, BLM-13.

SYSTEM LOCATION:

U.S. Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

BLM employees involved in a work related accident, private individuals involved in a BLM employee related accident, and private individuals involved in an accident on national resource lands or facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record contains the name of the person involved, social security number, address, nature of the accident, injuries and property damage, if any, witnesses, control number, and information on debts owed the Bureau as a result of the accident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902, 28 U.S.C. 2671–2680, 31 U.S.C. 240–243.

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 document information for the Department of the Interior automated system for accident reporting. Disclosures outside the Department of the Interior may be made, (1) to the Department of Labor in the event there is a claim for compensation, (2) from the record to individuals and companies involved, responsible or sureties, (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 of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or enforcing or emplementing the statute, rule, regulation, order or license, (5) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual, file folders arranged alphabetically by name.

RETRIEVABILITY:

Indexed by name of person involved in an accident, location, date and control number.

SAFEGUARDS:

In accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

General Records Schedule 1, item 32, provides for destruction after five years.

SYSTEM MANAGER(S) AND ADDRESSES:

Safety Officer, Premier Building (WO-811), U.S. Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240.

NOTIFICATION PROCEDURES:

To determine whether records are maintained on you in this system, write to the System Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your records write to the System Manager. Describe as specifically as possible the records sought. If copies are desired, indicate the maximum you are willing to pay. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

To request corrections or the removal of material from your files, write the System Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Persons involved, witnesses to an accident, and investigations by BLM employees and other authorities.

INTERIOR/LLM-21

SYSTEM NAME:

Travel—Interior, BLM-21.

SYSTEM LOCATION:

Division of Finance (520), U.S. Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240 and U.S. Department of the Interior, Bureau of Land Management, Denver Federal Center, Bldg. 50, Denver, Colorado 80225.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals authorized to travel at Government expense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the authorization to travel to specified places, name of traveler, purpose and date of travel, estimated costs, mode of transportation, travel voucher showing actual expenses and itinerary, and information on travel advances owed the Bureau.

AUTHORITY FOR MAINTENANCES OF THE SYSTEM:

5 U.S.C. 5701, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of records are (a) to process requests for and issue authorizations to travel at the government's expense and (b) to process expense vouchers upon completion of travel. Disclosure 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 perty 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 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 regulation, order or license, (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual, file folders arranged alphabetically by name and authorization number

RETRIEVABILITY:

Index by authorization number.

SAFEGUARDS:

In accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

Record destroyed four years after travel is completed, in accordance with BLM Manual 1271, Category G, Item 42.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director—Management Services, U.S. Department of Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240

NOTIFICATION PROCEDURE:

To determine whether the records are maintained on you in this system, write to the Systems Manager or to the offices cited under Records Location. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your records write to the Systems Manager or the the Offices cited under Records Location. Describe as specifically as possible the records sought. If copies are desired, indicate the maximum you are willing to pay. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

To request corrections or the removal of material from the files write the Systems Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Bureau employees and individuals authorized to travel.

INTERIOR/LLM-22

SYSTEM NAME:

Financial Management—Interior, BLM–22.

SYSTEM LOCATION:

U.S. Department of the Interior Bureau of Land Management, Denver Federal Center, Bldg. 50, Denver, Colorado 80225.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Vendors and their designated payee who have sold items to BLM. [The records contained in this system which pertain to individuals contain principally proprietary information concerning sole proprietorships. Some of the records in the system which pertain to individuals may reflect personal information, however. Only the records reflecting personal information are subject to the Privacy Act. The system also contains records concerning corporations and other business entitites. These records are not subject to the Privacy Act].

CATEGORIES OF RECORDS IN THE SYSTEM:

The record contains the vendor's and payee's address, description of the items purchased, purchase price, and the purchase order number; and information on debts owed the Bureau.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 1201.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the rocords is to designate payees to whom payments are to be made. Disclosures outside the Department of the Interior may be made (1) to Federal, State or local agencies in response to specific requests for pertinent information, (2) 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, (3) 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, (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer, Mag-tape.

RETRIEVABILITY:

Indexed by name of vendor and payee, and the purchase order number.

SAFEGUARDS:

In accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

Record destroyed 6 years, 3 months after payment in accordance with BLM Manual 1271, Category G, Item No. 117.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Division of Budget and Finance, U.S. Department of the Interior, Bureau of Land Management, Denver Federal Center, Bldg. 50, Denver, Colorado 80225.

NOTIFICATION PROCEDURE:

To determine whether the records are maintained on you in this system, write to the Systems Manager. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

To see your records write to the Systems Manager. Describe as specifically as possible the records sought. If copies are desired, indicate the maximum you are willing to pay. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

To request corrections or the removal of material from your files, write the Systems Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Vendors and GSA purchase contracts.

INTERIOR/LLM-24

SYSTEM NAME:

Copy Fee Deposit—Interior, BLM–24.

SYSTEM LOCATION:

All BLM State offices listed in Appendix XI.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have deposited money with Bureau of Land Management to be used to pay for copies of records, lists, maps or other documents.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record contains the depositor's name, mailing address, identification or items for which there is a standing order, and information on amounts on deposit.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512.

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 maintain individual accounts of advance copy fee deposits and (b) to maintain names of companies and individuals who have standing requests for copies of specific records each time they are produced, such as lists of parcels available for oil and gas simultaneous lease filings. 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, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license, and (3) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized; arranged alphabetically by name on tape or disk.

RETRIEVABILITY:

Indexed by name of depositor.

SAFEGUARDS:

In accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

Disposition is pending approval of the Archivist of the U.S.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director—Management Services, U.S. Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240.

NOTIFICATION PROCEDURES:

To determine whether the records are maintained on you in this system, write to the Systems Manager or to the offices cited under Records Location. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your records write to the Systems Manager or to the offices cited under Records Location. Describe as specifically as possible the records sought. If copies are desired indicate the maximum you are willing to pay. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

To request corrections or the removal of material from your files, write the Systems Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Depositors.

INTERIOR/LLM-28

SYSTEM NAME:

Adopt a Wild Horse—Interior, BLM-28.

SYSTEM LOCATION:

U.S. Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240 and offices listed in Appendix XI.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicable to obtain custody of a wild horse or burro.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record contains the applicant's identification and qualifications to obtain custody of a wild horse or burro, the record of the disposition of the application, the cooperative agreement when custody is granted, information on fees assessed, and debts owned the Bureau.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. 1333(b).

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 identify individuals who have applied to obtain custody of a wild horse or burro and (b) to document the rejection, suspension or granting of the request. Disclosures outside the Department of the Interior may be made, (1) to organizations and members of the general public as to the disposition of wild horses or burros, (2) 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, (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsibile for invetigation or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license, and (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 582a(b)(12): Disclosures may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETRAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual, file folders arranged alphabetically by name, and computer data base program.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

In accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

BLM Manual H1271–1, Category "Q", itam No. 1. Records will remain indefinitely until all local needs are satisfied. Destroy individual data

elements when superseded or no longer needed for administrative purposes. Computer files are archived periodically.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Wild Horses and Burros, U.S. Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240.

NOTIFICATION PROCEDURE:

To determine whether records are maintained on you in this system, write to the System Manager or to the offices cited under Records Location. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

To see your records write to the System Manager or to the offices cited under Records Location. Describe as specifically as possible the records sought. If copies are desired indicate the maximum you are willing to pay. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURE:

To request corrections or the removal of material from your files, write the System Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES.

Applicants.

INTERIOR/LLM-29

SYSTEM NAME:

Recordation of Mining Claims—Interior, BLM–29.

SYSTEM LOCATION:

All BLM State offices listed in Appendix XI.

CATEGORIES OF INDIVIDUALS-COVERED BY THE SYSTEM:

Individuals who have filed notices or certificates of location for mining claims, millsites, or tunnel sites and individuals who have filed notice of transfer after obtaining a possessory interest in a mining claim, millsite or tunnel site.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record contains the owner's name, mailing and resident address, identification and location of the mining claim, millsite or tunnel site, reference to the recordation in the county or local public recording office, verification of assessment or notice of intent to hold, applications for patents with related documents, and information on fees or payments due the Bureau.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

43 U.S.C. 1731, 1740, and 1744.

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 (1) to record unpatented mining claims, millsites and tunnel sites, (2) to identify the owners, (3) to process applications for mineral surveys and patents, (4) for recordation of adjudicative actions, and (5) to index documentations in case files supporting administrative actions and notations made on land and resource status records. Disclosure outside the Department of the Interior may be made, (1) to appropriate Federal agencies when location is within the agency's geographic area of responsibility, (2) to Federal, State or local agencies or a member of the general public in response to a specific request for pertinent information, (3) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the Untied 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, (5) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office, and (6) to the public as published in microfiche format for sale on a quarterly basis.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosure may be made to a comsumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSORIES, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM:

STORAGE:

Maintained manually in case file folders and on computer magnetic tape.

RETRIEVABILITY:

Indexed by claim name, claim owner, geographic location, and BLM serial number.

SAFEGUARDS:

In accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are permanently retained in accordance with BLM Manual 1271, Category L, Items 8 & 9, and Category Q, Item 22.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Records Systems, Bureau of Land Management, U.S. Department of the Interior, Denver Service Center, Denver, Colorado 80225.

NOTIFICATION PROCEDURES:

To determine whether records are maintained on you in this system, write to the Systems Manager or to the offices cited under System Location. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

To see your records write to the System Manager or to the offices cited under System Location. Describe as specifically as possible the records sought. If copies are desired, indicate the maximum you are willing to pay. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

Write to the appropriate Bureau of Land Management State Office. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Owners of unpatented mining claims, millsite or tunnel sites and Department of the Interior employees.

Appendix

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XI. Bureau of Land Management

A. Headquarters Office: Department of the Interior, Bureau of Land Management, 18th & C Streets NW., Washington, DC 20240.

B. State and District Offices: (Add Bureau of Land Management, U.S. Department of the Interior, to all addresses.)

Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska
Anchorage District Office, 4700 E. 72nd Avenue, Anchorage, AK 99507
Peninsula Res. Area, Same as Anchorage DO
Glennallen Res. Area, P.O. Box 42, Glennallen, AK 99588
McGrath Res. Area, Same as Anchorage DO
Fairbanks District Office, 1541 Gaffney Rd., Fairbanks, AK 99703
Northwest Res. Area, P.O. Box 1150, Fairbanks, AK 99707
Tok Field Office, P.O. Box 307, Tok, AK 99780
Yukon Res. Area, P.O. Box 1150, Fairbanks, AK 99707
Arctic Res. Area, Same as Yukon RA

Alaska Fire Service, No. Post Ft. Wainwright P.O. Box 3505 Fairbanks, AK 99707
Nome Field Office, Nome, AK 99762
Arizona State Office, 3707 North 7th Street, P.O. Box 16563, Phoenix, Arizona 85011
Arizona Strip District Office, 196 E. Tabernacle, St. George, UT 84770
Shivwits Resource Area, Same As Arizona Strip DO
Vermillion Resource Area, Same As Arizona Strip DO
Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, AZ 85027
Phoenix Resource Area, Same as Phoenix DO
Lower Gila Resource Area, 2015 W. Deer Valley Road, Phoenix, AZ 85027
Kingman Resource Area, 2475 Beverly Avenue, Kingman, AZ 86401
Safford District Office, 425 E. 4th Street, Safford, AZ 85546
Gila Resource Area, Same as Safford DO
San Simon Resource Area, Same as Safford DO
Yuma District Office, 3150 Winsor Avenue, P.O. Box 5680, Yuma, AZ 85364
Yuma Resource Area, Same as Yuma DO
Havasu Resource Area, 3189 Sweetwater, P.O. Box 685, Lake Havasu City, AZ 86403
California State Office, Federal Building, 2800 Cottage Way, E–2841, Sacramento, California 95825
Bakersfield District Office, Federal Bldg., Rm 302, 800 Truxtun Ave., Bakersfield, CA 93301
Caliente Resource Area, 520 Butte Street, Bakersfield, CA 93305
Bishop Resource Area, 873 No. Main St., Suite 201, Bishop, CA 93514
Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630
Hollister Resource Area, P.O. Box 365, Hollister, CA 95023
Susanville District Office, 705 Hall Street, P.O. Box 1090, Susanville, CA 96130
Eagle Lake Resource Area, 2545 Riverside Drive, P.O. Box 1090, Susanville, CA 96130
Alturas Resource Area, Centerville Rd., P.O. Box 771, Alturas, CA 96101
Surprise Resource Area, 602 Cressler Street, P.O. Box 460, Cedarville, CA 96104
Ukiah District Office, 555 Leslie Street, P.O. Box 940, Ukiah, CA 95482
Arcata Resource Area, 1125-16th Street, P.O. Box II, Arcata, CA 95521.
Clear Lake Resource Area, Same Add. as Ukiah DO
Redding Resource Area, 355 Hemsted Drive, Redding, CA 96002.
California Desert District, 1695 Spruce Street, Riverside, CA 92507.
Ridgecrest Resource Area, 112 East Dolphin Street, Ridgecrest, CA 93555.
Indio Resource Area, Same as California Desert DO
El Centro Resource Area, 333 South Waterman Avenue, El Centro, CA 92243.
Barstow Resource Area, 831 Barstow Road, Barstow, CA 92311.
Needles Resource Area, 901 Third Street, Needles, CA 92363.
Colorado State Office, 2020 Arapahoe Street, Denver, CO 80205.
Craig District Office, 455, Emerson Street, Craig, CO 81625.
Little Snake Resource Area, 1280 Industrial Avenue, Craig, CO 81625
White River Resource Area, 73544 Highway 64, P.O. Box 928, Meeker, CO 81641.
Kremmling Resource Area, 1116 Park Avenue, P.O. Box 68, Kremmling, CO 80459.
Montrose District Office, 2465 S. Townsend Avenue, Montrose, CO 81401.
Uncompahgre Basin Resource Area, 2505 S. Townsend Avenue, Montrose, CO 81401.
Gunnison Basin Resource Area, 216 N. Colorado, Gunnison, CO 81230.
San Juan Resource Area, Federal Building, Room 102, 701 Camino Del Rio, Durango, CO 81301.
Canon City District Office, 3080 East Main Street, P.O. Box 311, Canon City, CO 81212.
San Luis Resource Area, 1921 State Avenue, Alamosa, CO 81101.
Royal Gorge Resource Area, 9th & Royal Gorge Boulevard, P.O. Box 1470 Canon City, CO 81212.
Northeast Resource Area, Building 41, Room 129, Denver Federal Center, Denver, CO 80225.
Grand Junction District Office, 764 Horizon Drive, Grand Junction, CO 81506
Grand Junction Resource Area, Same Add. as Grand Junction DO
Glenwood Springs Resource Area, 50629 Highway 6 and 24, P.O. Box 1009, Glenwood Springs, CO 81602.
Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706
Boise Dist. Office, 3948 Development Avenue, Boise, ID 83705
Cascade Resource Area, Same Add. as Boise DO
Owyhee Resource Area, Same Add. as Boise DO
Bruneau Resource Area, Same Add. as Boise DO
Jarbidge Resource Area, Same Add. as Boise DO
Burley District Office, Route 3, Box 1, Burley, ID 83318
Deep Creek Resource Area, Same Add. as Burley DO
Snake River Resource Area, Same Add. as Burley DO
Coeur d'Alene Dist. Off., 1808 N. Third Street, Coeur d'Alene, ID 83814
Emerald Empire Resource Area, Same Add. as Coeur D'Alene DO
Cottonwood Resource Area, Route 3, Box 181, Cottonwood, ID 83522
Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, ID 83401
Pocatello Resource Area, Fed. Bldg., U.S. Courthouse, 250 So. 4th Ave., Suite 172, Pocatello, ID 83201
Big Butte-Resource Area, Same Add. as ID Falls DO
Medicine Lodge Resource Area, Same Add. as ID Falls DO
Salmon District Office, P.O. Box 430, Salmon, ID 83467
Lemhi Resource Area, Same Add. As Salmon DO
Challis-Mackay Resource Area, Same Add. as Salmon DO
Shoshone Dist. Off., 400 West "F" Street, P.O. Box 2B, Shoshone, ID 83352
Monument Resource Area, Same Add. as Shoshone DO
Bennett Hills Resource Area, Same Add. as Shoshone DO
Eastern States Office, 350 S. Pickett Street, Alexandria, Virginia 22304
Jackson District Office, P.O. Box 11248, Delta Station, Jackson, MS 39213
Milwaukee District Office, P.O. Box 631, Milwaukee, WI 53201–0631
Rolla Resource Area, 901 Pine Street, Suite 201, Rolla, MO 65401
Montana State Office, Granite Tower, 222 N. 32nd Street, P.O. Box 36800, Billings, Montana 59107
Butte Dist. Off., 106 N. Parkmont, P.O. Box 3388, Butte, MT 59702
Headwater Resource Area, Same Add. as Butte DO
Dillon Resource Area, Ibey Bldg. N. Dillon, P.O. Box 1048, Dillon, MT 59725
Garnet Resource Area, 3255 Ft. Missoula Road, Missoula, MT 59806
Miles City District Office, West of Miles City, P.O. Box 950, Miles City, MT 59301
Big Dry Resource Area, Miles City Plaza, Miles City, MT 59301
Powder River Resource Area, Same Add. as Miles City DO
Permanent Field Station (Remote), Jordan, MT
Permanent Field Station, Ekalaka, MT
South Dakota Resource Area, 310 Roundup Street, Belle Fourche, SD 57717
Billings Resource Area, 810 East Main Street, Billings, MT 59101
Dickinson District Office, P.O. Box 1229, Dickinson, ND 58602
Lewistown District Office, Airport Road, Lewistown, MT 59457
Judith Resource Area,
Same Add. as Lewistown DO
Phillips Resource Area, 501 So. 2nd St., E., P.O. Box B, Malta, MT 59538
Havre Resource Area, West 2nd St., P.O. Drawer 911, Havre, MT 59501
Valley Resource Area, RR 1–4775, Glasgow, MT 59230
Great Falls Resource Area, 215 1st Avenue North, P.O. Drawer 2865, Great Falls, MT 56403
Nevada State Office, Federal Building, 300 Booth St., P.O. Box 12000, Reno, Nevada 89520
Battle Mountain District Office, P.O. Box 1420, Battle Mountain, NV 89820
Shoshone-Eureka Resource Area, Same Add. Battle Montain DO
Tonopah Resource Area, Bldg., 102 Old Radar Base, Box 911, Tonopah, NV 89049
Carson City District Office, 1050 E. William Street, Suite 335, Carson City, NV 89701
Lahontan Resource Area, Same Add. Carson City DO
Walker Resource Area, Same Add. Carson City DO
Palomino Valley Wild Horse, and Burro Placement Center, P.O. Box 3270, Sparks, NV 89431
Elko District Office, P.O. Box 831, Elko, NV 89801
Elko Resource Area, Same Add. as Elko DO
Wells Resource Area, Same Add. as Elko DO
Ely District Office, Star Route 5, Box 1, Ely, NV 89301
Egan Resource Area, Same Add. as Ely DO
Schell Resource Area, Same Add. as Ely DO
Las Vegas District Office, P.O. Box 26569, 4765 Vegas Drive, Las Vegas, NV 89126
Stateline-Esmeralda Res. Area, Same Add. as Las Vegas DO

Caliente Resource Area, P.O. Box 237, Caliente, NV 89008
Winnemucca District Office, 705 East 4th Street, Winnemucca, NV 89445
Paradise-Denio Res. Area, Same Add. as Winnemucca DO
Sonoma-Garlach Res. Area, Same Add. as Winnemucca DO
New Mexico State Office, Joseph M. Montoya Federal Building, South Federal Place, P.O. Box 1449, Santa Fe, New Mexico 87501–1449
Albuquerque District Office, P.O. Box 6770, Albuquerque, NM 87197–6770
Rio Puerco Resource Area, Same Add. as Albuq. DO
Farmington Res. Area, 900, La Plata Highway, Farmington, NM 87499–1404
Taos Resource Area, Plaza Montevideo Bldg., Cruz Alta Road, P.O. Box 1045, Taos, NM 87571–1045
Las Cruces District Office, 1800 Marquess, P.O. Box 1420, Las Cruces, NM 88004–1420
Las Cruces/Lordsburg Res. Area, Same Add. as Las Cruces DO
White Sands Resource Area, Same Add. as Las Cruces DO
Socorro Res. Area, 198 Neel Ave., NW, Socorro, NM 87801–1219
Tulsa District Office, 6136 East 32nd Place, Tulsa, OK 74135
Oklahoma Resource Area, 200 NW Fifth, RM. 548, Oklahoma City, OK 773102
Roswell District Office, 1717 W. Second Street, Featherstone Farms Bldg., P.O. Box 1397, Roswell, NM 88201–1397
Roswell Resource Area, Same Add. as Roswell DO
Carlsbad Resource Area, Federal Bldg., Room 163, 113 S. Halaguena, P.O. Box 1778, Carlsbad, NM 88220–1157
Lea Co. Inspection Section, P.O. Box 1157, Hobbs, NM 88240–1157
Oregon State Office, 825 N.E. Multnomah Street (P.O. Box 2965), Portland, Oregon 97208
Burns District Office, 74 South Alvord Street, Burns, OR 97720
Three Rivers Resource Area, Same Add. as Burns DO
Andrews Resource Area, Same Add. as Burns DO
Coos Bay District Office, 333 South Fourth Street, Coos Bay, OR 79420
Tioga Resource Area, Same Add. as Coos Bay DO
Umpqua Resource Area, Same Add. as Coos Bay DO
Myrtlewood Resource Area, Same Add. as Coos Bay DO
Eugene District Office, 1255 Pearl Street, P.O. Box 10226, Eugene, OR 97401
Noti Resource Area, Same Add. as Eugene DO
Dorena Resource Area, Same Add. as Eugene DO
Mohawk Resource Area, Same Add. as Eugene DO
Lorane Resource Area, Same Add. as Eugene DO
Lakeview District Office, 1000 Ninth Street S, P.O. Box 151, Lakeview, OR 97630
High Desert Resource Area, Same Add. as Lakeview DO
Klamath Resource Area, 6200 South Sixth Street, Klamath Falls, OR 97601
Warner Lakes Resource Area, Same Add. as Lakeview DO
Medford District Office, 3040 Biddle Road, Medford, OR 97504
Klamath Resource Area, Same Add. as Medford DO
Butte Falls Resource Area, Same Add. as Medford DO
Jacksonville Resource Area, Same Add. as Medford DO
Grants Pass Resource Area, Same Add. as Medford DO
Glendale Resource Area, Same Add. as Medford DO
Prineville District Office, P.O. Box 550, Prineville, OR 97754
Central Oregon Resource Area, Same Add. as Prineville DO
Deschutes Resource Area, Same Add. as Prineville DO
Roseburg District Office, 777 N.W. Garden Valley Boulevard, Roseburg, OR 97470
North Umpqua Resource Area, Same Add. as Roseburg DO
Dillard Resource Area, Same Add. as Roseburg DO
Drain Resource Area, Same Add. as Roseburg DO
Salem District Office, 1717 Fabry Road, S.E., Salem, OR 97302
Walter Horning Seed Orchard, Same Add. as Salem DO
Santiam Resource Area, Same Add. as Salem DO
Alsea Resource Area, Same Add. as Salem DO
Tillamook Resource Area, Same Add. as Salem DO
Yamhill Resource Area, Same Add. as Salem DO
Clackamas Resource Area, Same Add. as Salem DO
Spokane District Office, East 4217 Main Avenue, Spokane, WA 99202
Wenatchee Resource Area, 1133 North Western Avenue, Wenatchee, WA 98801
Border Resource Area, Same Add. as Spokane DO
Vale District Office, 100 Oregon Street, P.O. Box 700, Vale, OR 97918
Baker Resource Area, Same Add. as Vale DO
Northern Malheur Resource Area, Same Add. as Vale DO
Southern Malheur Resource Area, Same Add. as Vale DO
Utah State Office, Coordinated Financial Center, 324 South State Street, Salt Lake City, Utah 84111–2303
Salt Lake District Office, 2370 South 2300 West, Salt Lake City, UT 84119
Bear River Resource Area, Same Add. as Salt Lake DO
Pony Express Resource Area, Same Add. as Salt Lake DO
Permanent Field Station, Grouse Creek, UT 83413
Cedar City District Office, 1579 North Main Street, P.O. Box 724, Cedar City, UT 84720
Dixie Resource Area, 225 North Bluff Street, P.O. Box 726, St. George, UT 84770
Kanab Resource Area, 320 North First East, P.O. Box 458, Kanab, UT 84741
Escalante Resource Area, Escalante, UT 84726
Beaver River Resource Area, 444 South Main, Cedar City, UT 84720
Richfield District Office, 150 East 900 North, P.O. Box 768, Richfield, UT 84701
Warm Springs Resource Area, P.O. Box 778, Fillmore, UT 84631
House Range Resource Area, P.O. Box 778, Fillmore, UT 84631
Henry Mountain Resource Area, P.O. Box 99, Hanksville, UT 84734
Sevier River Resource Area, 180 North 100 East, P.O. Box 705, Richfield, UT 84701
Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, UT 84532
San Juan Resource Area, 480 South First West, P.O. Box 7, Monticello, UT 84535
Grand Resource Area, Sand Flats Road, P.O. Box M, Moab, UT 84532
Price River Resource Area, 900 North Seventh East, P.O. Box AB, Price, UT 84501
San Rafael Resource Area, 900 North Seventh East, P.O. Box AB, Price, UT 84501
Vernal District Office, 170 South 500 East, Vernal, UT 84078
Diamond Mountain Resource Area, Same Add. as Vernal DO
Book Cliffs Resource Area, Same Add. as Vernal DO
Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, WY 82003
Casper District Office, 951 N. Poplar Road, Casper, WY 82601
Platte River Resource Area, 111 South Wolcott, Casper, WY 82601
Buffalo Resource Area, 300 Spruce Street, Buffalo, WY 82834
Newcastle Resource Area, 1501 Highway 16 Bypass, Newcastle, WY 82701
Rawlins District Office, P.O. Box 670, 1300 Third Street, Rawlins, WY 82301
Divide Resource Area, P.O. Box 670, 1719 Edinburgh, Rawlins, WY 82301
Medicine Bow Resource Area, P.O. Box 670, 1719 Edinburgh, Rawlins, WY 82301
Lander Resource Area, P.O. Box 589, Jett Building, Highway 287 S., Lander, WY 82520
Rock Springs District Office, P.O. Box 1869, Highway 191 North, Rock Springs, WY 82902–1869
Big Sandy Resource Area, P.O. Box 1170, 79 Winston Drive, Rock Springs, WY 82902–1170
Salt Wells Resource Area, P.O. Box 1170, 79 Winston Drive, Rock Springs, WY 82902–1170
Kemmerer Resource Area, P.O. Box 632, Kemmerer, WY 83101
Pinedale Resource Area, P.O. Box 768, Molyneux Building, 431 West Pine Street, Pinedale, WY 82941
Worland District Office, P.O. Box 119, 101 South 23rd, Worland, WY 82401
Grass Creek Resource Area, Same Add. as Worland DO
Washakie Resource Area, Same Add. as Worland DO
Cody Resource Area, P.O. Box 518, 1714 Stampede Avenue, Cody, WY 82414

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[FR Doc. 86–15515 Filed 7–9–86; 8:45 am]
BILLING CODE 4310–84–M

Bureau of Indian Affairs

Indian Tribal Entites* Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

June 24, 1986.

This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 5 U.S.C. 2 and 9; and 209 DM 8.

Notice is hereby given in accordance with 25 CFR 83.6(b) (formerly 25 CFR 54.6(b)) by the Bureau of Indian Affairs of those Indian tribal entities which are recognized as having a special relationship with the United States. Because of this special relationship, they are eligible for services administered by the Bureau of Indian Affairs. The listed entities are not necessarily eligible for programs administered by other Federal Agencies.

Indian Tribal Entities* Within the Contiguous 48 States Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs

Absentee—Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, Palm Springs, California
Ak Chin Indian Community of Papago Indians of Maricopa, Ak Chin Reservation, Arizona
Alabama—Quassarte Tribal Town of the Creek Nation of Indians of Oklahoma
Alturas Indian Rancheria of Pit River Indians of California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, Californina
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan
Berry Creek Rancheria of Maidu Indians of California
Big Bend Rancheria of Pit River Indians of California
Big Lagoon Rancheria of Smith River Indians of California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Rancheria of Pomo & Pit River Indians of California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria of California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of MeWuk Indians of California
Burns Paiute Indian Colony, Oregon
Cabazon Bank of Cahuilla Mission Indians of the Cabazon Reservation, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Indian Tribe of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
Viejas Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Cayuga Nation of New York
Cedarville Rancheria of Northern Paiute Indians of California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
CherAe Heights Indian Community of the Trinidad Rancheria of California
Cherokee Nation of Oklahoma
Cheyenne—Arapaho Tribes of Oklahoma
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation of Oklahoma
Chicken Ranch Rancheria of MeWuk Indians of California
Chippewa—Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Band Potawatomi Indian Tribe of Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Coast Indian Community of Yurok Indians of the Resighini Rancheria, California
Cocopah Tirbe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Indian Tribe of Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakima Indian Nation of the Yakima Reservation, Washington
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Covelo Indian Community of the Round Valley Reservation, California
Cow Creek Band of Umpqua Indians of Oregon
Coyote Valley Band of Pomo Indians of California
Creek Nation of Oklahoma
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Cuyapaipe Community Diegueno Mission Indians of the Cuyapaipe Reservation, California
Death Valley TimbiSha Shoshone Band of California
Delaware Tribe of Western Oklahoma
Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria of Smith River Tolowa Indians of California
Ely Indian Colony of Nevada
Enterprise Rancheria of Maidu Indians of California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community of Wisconsin Potawatomie Indians, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of Paiute Indians of the Fort Didwell Reservation, California

* Includes within its meaning Indian tribes, bands, villages, communities and pueblos as well as Eskimos and Aleuts.

Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada
Fort McDowell Mohave—Apache Indian Community, Fort McDowell Band of Mohave Apache Indians of the Fort McDowell Indian Reservation, Arizona
Fort Mojave Indian Tribe of Arizona
Fort Sill Apache Tribe of Oklahoma
Gila River PimaMaricopa Indian Community of the Gila River Indian Reservation of Arizona
Grand Traverse Band of Ottawa & Chippewa Indians of Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of WintunWailaki Indians of California
Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe of the Hoopa Valley Reservation, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Tribe of the Hualapai Indian Reservation, Arizona
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of MeWuk Indians of California
Jamestown Klallam Tribe of Washington
Jamul Indian Village of California
Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Indian Tribe of Oklahoma
Keweenaw Bay Indian Community of L'Anse, Lac Vieux Desert and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan
Kialegee Tribal Town of the Creek Indian Nation of Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma (includes Texas Band of Kickapoo Indians)
Kiowa Indian Tribe of Oklahoma
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Lookout Rancheria of Pit River Indians, California
Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community of the Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester—Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Menominee Indian Tribe of Wisconsin, Menominee Indian Reservation, Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six Component Reservations: Boise Forte Band (Nett Lake, Fond du Lac Band, Grand Portage Band, Leech Lake Band, Mille Lac Band, White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Montgomery Creek Rancheria of Pit River Indians of California
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Narragansett Indian Tribe of Rhode Island
Navajo Tribe of Arizona, New Mexico and Utah
Nez Perce Tribe of Idaho, Nez Perce Reservation, Idaho
Nisqually Indian Community of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshone Indians of Utah (Washakie)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Indians of Wisconsin, Oneida Reservation, Wisconsin
Onondaga Nation of New York
Osage Tribe of Oklahoma
Ottawa Tribe of Oklahoma
Otoe—Missouria Tribe of Oklahoma
Paiute Indian Tribe of Utah
Paiute—Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute—Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute—Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Taqui Tribe of Arizona
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Tuima Reservation, California
Pawnee Indian Tribe of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Rancheria of Pomo Indians of California
Pit River Indian Tribe of the X–L Ranch Reservation, California
Poarch Band of Creek Indians of Alabama
Ponca Tribe of Indians of Oklahoma

Port Gamble Indiana Community of the Port Gamble Reservation, Washington
Potter Valley Rancheria of Pomo Indians of California
Prairie Band of Potawatomi Indians of Kansas
Prairie Island Indiana Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Oklahoma
Quartz Valley Rancheria of Karok, Shasta and Upper Klamath Indians of California
Quechan Tribe of the Fort Yuma Indian Reservation, California
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band of Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin, Red Cliff Reservation, Wisconsin
Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota
Redding Rancheria of Pomo Indians of California
Redwood Valley Rancheria of Pomo Indians of California
Reno—Sparks Indian Colony, Nevada
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Roaring Creek Rancheria of Pit River Indians of California
Robinson Rancheria of Pomo Indians of California
Rohnerville Rancheria of Bear River of Mattole Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Tribe of Missouri in Kansas and Nebraska
Sac & Fox Tribe of Indians of Oklahoma
Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation, Michigan
Salt River Pima—Maricopa Indian Community of the Salt River Reservation, Arizona
San Carlos Apache Tribe of the San Carlos Reservation of Arizona
San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
San Pasqual Band of Diegueno Mission Indians of the San Pasqual Reservation, California
Santa Rosa Indian Community of the Santa Rose Rancheria of California
Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
Santee Sioux Tribe of the Santee Reservation of Nebraska
Sauk—Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Seminole Nation of Oklahoma
Seminole Tribe of Florida, Dania, Big Cypress and Brighton Reservations, Florida
Seneca Nation of New York
Seneca—Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake)
Sheep Ranch Rancheria of MeWuk Indians of California
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone—Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone—Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton—Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria of California
Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California
Sokoagon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation, Wisconsin
St. Regis Band of Mohawk Indians of New York
Standing Rock Sioux Tribe of the Standing Rock Reservation, North and South Dakota
Strockbridge—Munsee Community of Mohican Indians of Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of the Summit Lake Reservation, Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria of Paiute, Maidu, Pit River & Washoe Indians of California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of Diegueno Mission Indians of the Sycuan Reservation, California
Table Bluff Rancheria of Wiyot Indians of California
Table Mountain Rancheria of California
Te-Moak Tribe of Western Shoshone Indians of Nevada
Thlopthlocco Tribal Town of the Creek Indian Nation of Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona (formerly known as the Papago Tribe of the Sells, Gila Bend and San Xavier Reservations, Arizona)
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Toeres-Martinez Band of Cahuilla Mission Indians of the Torres-Martinez Reservation, California
Tule River Indian Tribe of the Tule River Indian Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians, Turtle Mountain Indian Reservation, North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Luiseno Mission Indians of the Twenty-Nine Palms Reservation, California
United Keetoowah Band of Cherokee Indians, Oklahoma
Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California

Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaiti Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville and Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Indian Reservation, Arizona
Wichita Indian Tribe of Oklahoma
Winnebago Tribe of the Winnebago Reservation of Nebraska
Winnemucca Indian Colony of Nevada
Wisconsin Winnebago Indian Tribe of Wisconsin
Wyandotte Tribe of Oklahoma
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Indian Community of the Camp Verde Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch, Nevada
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Yurok Tribe of the Hoopa Valley Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs

Akhiok, Native Village of Akhiok
Akiachak, Native Village of Akiachak
Akiak Native Community
Akutan, Native Village of Akutan
Alakanuk, Village of Alakanuk
Alatna Village
Alegnagik, Village of Alegnagik
Allakaket Village
Ambler, Village of Ambler
Anaktuvuk Pass, Village of Anaktuvuk Pass
Angoon Community Association
Aniak, Village of Aniak
Anvik Village
Arctic Village
Atka, Native Village of Atka
Atkasook Village
Atmauthluak, Village of Atmauthluak
Barrow Native Village (Point Barrow)
Beaver Village
Belkofsky, Native Village of Belkofsky
Bethel Native Village
Bettles Field/Evansville Village
Birch Creek Village
Brevig Mission Village
Buckland, Native Village of Buckland
Cantwell, Native Village of Cantwell
Chalkyitsik Village
Chanega (Chenega), Native Village of Chanega
Chuathbaluk, Village of Chuathbaluk
Chefornak, Village of Chefornak
Chevak Native Village
Chickaloon Village
Chignik, Native Village of Chignik
Chignik Lagoon, Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village of Klukwan
Chilkoot Indian Association of Haines
Chistochina, Native Village of Chistochina
Chitina, Native Village of Chitina
Circle Village
Clark's Point, Village of Clark's Point
Copper Center Village
Craig Community Association
Crooked Creek, Village of Crooked Creek
Deering, Native Village of Deering
Dillingham, Native Village of Dillingham
Diomede, Native Village of Diomede (aka Inalik)
Dot Lake, Village of Dot Lake
Douglas Indian Association
Eagle, Village of Eagle
Eek, Native Village of Eek
Egegik Village
Eklutna Native Village
Ekuk, Native Village of Ekuk
Ekwok Village
Elim, Native Village of Elim
Emmonak Village
Eyak Native Village
False Pass, Native Village of False Pass
Fort Yukon, Native Village of Fort Yukon
Gakona, Native Village of Gakona
Galena Village (aka Louden Village)
Gambell, Native Village of Gambell
Golovin, Village of Golovin
Goodnews Bay, Native Village of Goodnews Bay
Grayling, Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Hooper Bay, Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Iliamna, Village of Iliamna
Inupiat Community of the Artic Slope
Ivanoff Bay Village
Kake, Organized Village of Kake
Kaktovik Village of Barter Island (aka Barter Island)
Kalskag, Village of Kalskag
Kanatak, Native Village of Kanatak
Karluk, Native Village of Karluk
Kasaan, Native Village of Kasaan
Kasigluk, Native Village of Kasigluk
Kenatize Indian Tribe
Ketchikan Indian Corporation
Kiana Village
King Cove Village
King Island Native Community
Kipnuk, Native Village of Kipnuk
Kivalina, Native Village of Kivalina
Klawock Cooperative Association
Knki Village
Kobuk Village
Kokhanok Village
Kongiganak Native Village
Kotlik, Village of Kotlik
Kotzebue, Native Village of Kotzebue
Koyuk, Native Village of Koyuk
Koyukuk Native Village
Kwethluk, Organized Village of Kwethluk
Kwigillingok, Native Village of Kwigillingok
Kwinhagak, Native Village of Kwinhagak (aka Quinhagak)
Larsen Bay, Native Village of Larsen Bay
Levelock Village
Lime Village
Lower Kalskag, Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Marshall, Native Village of Marshall (aka Fortuna Ledge)
McGrath, Native Village of McGrath
Mekoryuk, Native Village of Mekoryuk, Island of Nunivak
Mentasta Village (aka Mentasta Lake)
Metlakatla Indian Community, Annette Island Reserve, Alaksa
Minto, Native Village of Minto
Mountain Village, Native Village of Mountain Village
Naknek Native Village
Napakiak, Native Village of Napakiak
Napaskiak Traditional Village
Nelson Lagoon, Native Village of Nelson Lagoon
Nenana Native Association
Newhalen Village
New Stuyahok Village
Newtok Village
Nightmute, Native Village of Nightmute
Nikolai Village
Nikolski, Native Village of Nikolski
Noatak, Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Nulato Village
Nunapitchuk, Native Village of Nunapitchuk
Old Harbor, Village of Old Harbor
Oscarville, Oscarville Traditional Village
Ouzinkie, Native Village of Ouzinkie
Pedro Bay Village

Perryville, Native Village of Perryville
Petersburg Indian Association
Pilot Point, Native Village of Pilot Point
Pilot Station Traditional Village
Pitka's Point, Native Village of Pitka's Point
Platinum Traditional Village
Point Hope, Native Village of Point Hope
Point Lay, Native Village of Point Lay
Portage Creek Village
Port Graham Village
Port Heiden, Native Village of Port Heiden
Port Lions, Native Village of Port Lions
Pribilof Islands Aleut Communities of St. Paul & St. George Island
Rampart Village
Red Devil, Village of Red Devil
Ruby, Native Village of Ruby
Russian Mission, Native Village of Russian Mission (Yukon)
Sand Point Village
Savoonga, Native Village of Savoonga
Saxman, Organized Village of Saxman
Scammon Bay, Native Village of Scammon Bay
Selawik, Native Village of Selawik
Shaguluk Native Village
Shaktoolik, Native Village of Shaktoolik
Sheldon's Point, Native Village of Sheldon's Point
Shishmaref, Native Village of Shishmaref
Shungnak, Native Village of Shunghak
Sitka Community Association
Sleetmute, Village of Sleetmute
South Naknek Village
Stebbins Community Association
Stevens, Native Village of Stevens
Stony River, Village of Stony River
St. Mary's Village (aka Algaaciq)
St. Michael, Native Village of St. Michael
Takotna Village
Tanacross, Native Village of Tanacross
Tanana, Native Village of Tanana
Tatitlek, Native Village of Tatitlek
Tazlina, Native Village of Tazlina
Telida Village
Teller Native Village
Tetlin, Native Village of Tetlin
Togiak, Traditional Village of Togiak
Tlingit & Haida Indians of Alaska
Tooksook Bay, Native Village of Toksook Bay
Tuluksak Native Community
Tuntutuliak, Native Village of Tuntutuliak
Tununak, Native Village of Tununak
Twin Hills Village
Tyonek, Native Village of Tyonek
Ugashik Village
Unalakleet, Native Village of Unalakleet
Venetie, Native Village of Venetie
Wainwright Village
Wales, Native Village of Wales
White Mountain, Native Village of White Mountain
Wrangell Cooperative Association

For additional information, contact Patricia Simmons, Division of Tribal Government Services, Branch of Tribal Relations, 1951 Consitution Avenue NW, Washington, DC 20245; telephone number (202) 343–4045.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 86–15516 Filed 7–9–86; 8:45 am]

BILLING CODE 4310-02-M

San Carlos Irrigation Project, Arizona; Operation and Maintenance Charges Villages, Towns, and Schools

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: General notice.

SUMMARY: The purpose of this general notice is to change the per acre foot assessment rate for the operation and maintenance of the irrigation facilities of the Joint Works of the San Carlos Irrigation Project serving Villages, Towns, and Schools, to properly reflect the cost of labor, materials, equipment, and services. The change is from $65.00 to $72.00 per acre foot.

EFFECTIVE DATE: This general notice shall become effective July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Ralph Esquerra, Project Engineer, San Carlos Irrigation Project, P.O. Box 250, Coolidge, Arizona 85228, telephone (602) 723–5439.

SUPPLEMENTARY INFORMATION: This notice is issued by authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Directors in 10 BIAM 3. An analysis of the costs of operation and maintenance of the Joint Works of the San Carlos Irrigation Project serving villages, towns, and schools was made and, on February 7, 1986 was presented to the Fact Finding Committee which is made up of representatives from the San Carlos Irrigation and Drainage District, San Carlos Irrigation Project, Gila River Indian Community, Pima Agency, and the Phoenix Area Office. There was no objection to increasing the assessment rate.

The public notice shall read as follows: San Carlos Irrigation Project, Assessment, Villages, Towns, and Schools.

(a) Such project water as shall be available may be delivered to the villages, towns, and schools, not included in the designated area of the San Carlos Irrigation Project, for the irrigation of lawns and gardens. Beginning on October, 1, 1986, and until further order, the charge for such service shall be $72.00 per acre foot of water delivered, payable in advance of delivery.

(b) The delivery of water and the collection therefore shall be made by the San Carlos Irrigation and Drainage District. It is agreed that the District shall retain $23.50 per acre foot on which collection shall be made, and as its compensation for rendering the service. The remainder of the collections shall be paid to the Project Engineer for the San Carlos Irrigation Project for the benefit of the Joint Works.

Walter R. Mills,

Acting Area Director.

[FR Doc. 86–15534 Filed 7–9–86; 8:45 am]

BILLING CODE 4310-02-M

San Carlos Irrigation Project, Arizona; Fiscal Year Operation and Maintenance Charges

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: General Notice.

SUMMARY: The purpose of the general notice is to change the per acre assessment rate for the operation and maintenance of the irrigation facilities of the Joint Works of the San Carlos Irrigation Project to properly reflect the cost of labor, materials, equipment and services. The change is from $26.69 per acre to $30.04 per acre per year.

EFFECTIVE DATE: This general notice shall become effective July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Ralph Esquerra, Project Engineer, San Carlos Irrigation Project, P.O. Box 250, Coolidge, Arizona 85228, telephone (602) 723–5439.

SUPPLEMENTARY INFORMATION: A study of the costs of operation, maintenance and replacements of the Joint Works of the San Carlos Irrigation Project was made and on February 7, 1986, presented to the Fact Finding Committee which is made up of representatives from the Gila River Indian Community, San Carlos Irrigation and Drainage District (SCIDD), Pima Agency, San Carlos Irrigation Project, and the Phoenix Area Office. SCIDD made comments and requested clarification of a portion of study contents. Careful consideration has been given to SCIDD's written and oral comments, the reasons for SCIDD comments, the information supporting such reasons and additional relevant information affecting on O&M charges.

Comments received (underlined) and responses were as follows:

(1) *Power for pumping charge should be based on the amount SCIP pays for the low-cost hydropower.* We based the pumping charge on the projected FY 1988 rate for Coolidge Dam power. Our method is consistent with that which was adopted by the Area Director in the FY 1986 rate study. The Coolidge Dam power rate is appropriate and we should continue to apply it to the pumping charge.

(2) *Financial statements should include a breakdown of starting and ending cash balances. The breakdown should specify funds held in reserve and funds that have been obligated.* This change will be incorporated in the next O&M rate study.

(3) *The preliminary rate study provides for two functional crews (Power and Irrigation) at Coolidge Dam. These crews appear to have overlapping responsibilities.* The pumping energy cost has been adjusted to eliminate the apparent overlap shown in the preliminary study.

(4) *Cost for flood damage paid in FY 1985 are an unusual expense, and, therefore, should not be a component of the rate base.* Flood damage costs were not included as a component of the rate base.

(5) *Costs for flood damage paid in FY 1985 should be covered by the reserve fund.* Funds will be transferred from the reserve fund in FY 1986 to cover the flood damage costs.

(6) *Earning from investments of irrigation operation and maintenance collections in FY 1986, 1987 and 1988 was not shown as projected income.* We are aware that earning from investments was not shown as projected income. We have elected not to show it as projected income because we consider it a "windfall" rather than a steady source of income. We plan to apply interest realized in FY 1985 to the FY 1987 bill for operation and maintenance charge.

(7) *The frequency of coating the penstock is excessive.* We agree and have revised the frequency to ten years.

The Project Engineer submitted his recommendation to the Phoenix Area Director recommending a change in the per acre assessment rate for the operation and maintenance of the irrigation facilities of the Joint Works of the San Carlos Irrigation Project for Fiscal Year 1988 and subsequent years thereafter, until further notice, at a rate of $30.04 per acre for land under the Project. The revenue to be derived from the assessment would provide for the projected costs of labor, materials and supplies and the cost associated with establishing a reserve fund, equipment replacement, safety of dams and power for irrigation pumping.

Pursuant to § 171.1(e) Part 171, subchapter H, Chapter 1, Title 25 of the Code of Federal Regulations, this general notice is issued by authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3.

The principal author of this document is Henry Dodge, Bureau of Indian Affairs, P.O. box 7007, Phoenix, Arizona 85011, telephone (602) 241–2285. The authority to issue this regulation is vested in the Secretary of the Interior by U.S.C. 201 and 25 U.S.C. 385.

The general Notice shall read as follows: San Carlos Irrigation Project, Assessment, Joint Works.

Pursuant to the Act of Congress approved June 7, 1924 (43 Stat. 476) and supplementary acts, the Repayment Contract of June 8, 1931, as amended, between the United States and San Carols Irrigation and Drainage District, and in accordance with applicable provisions of the order of the Secretary of the Interior of June 15, 1938, the cost of the operation and maintenance of the Joint Works of the San Carlos Irrigation Projects for Fiscal Year 1988 is estimated to the $3,003,622.00 and the rate of assessment for the said fiscal year and subsequent fiscal year until further order is hereby fixed at $30.04 for each acre of land.

Note: It is hereby certified that the economic and inflationary impacts of this general notice has been evaluated in accordance with Executive Order 12291.

Walter R. Mills,

Acting Area Director.

[FR Doc. 86–15535 Filed 7–9–86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AA-6665-B]

Alaska Native Claims Selection; Isanotski Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to ISANOTSKI CORPORATION for approximately 3 acres. The lands involved are within T. 62 S., R. 94 W., Seward Meridian, Alaska, in the vicinity of False Pass, Alaska.

A notice of the decision will be published once in the ALEUTIAN EAGLE and once a week for four (4) consecutive weeks in THE ANCHORAGE TIMES. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960.)

Any party claiming a property interest which is adversely affected by the decision shall have until August 11, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86–15517 Filed 7–9–86; 8:45 am]

BILLING CODE 4310-JA-M

[F-14880-X]

Alaska Native Claims Selection; Kikiktagruk Inupiat Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Kikiktagruk Inupiat Corporation for approximately 620 acres. The lands involved are in the vicinity of Kotzebue, Alaska.

Kateel River Meridian, Alaska

T. 19 N., R. 16 W. (Unsurveyed).

A notice of the decision will be published once a week for four (4) consecutive weeks, in the TUNDRA TIMES. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13 Anchorage, Alaska 99513. ((907) 271–5906.)

Any party claiming a property interest which is adversely affected by the decision shall have until August 11, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to

file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, Subpart E shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-15518 Filed 7-9-86; 8:45 am]

BILLING CODE 4310-JA-M

[AA-6695-B]

Alaska Native Claims Selection; the Port Graham Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1614(a), will be issued to the Port Graham Corporation for 77.85 acres. The lands involved are in the vicinity of Port Graham, Alaska.

U.S. Survey No. 4764, Alaska, situated on the northeasterly shore of Rocky Bay, easterly of Picnic Harbor.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the CORDOVA TIMES. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960.)

Any party claiming a property interest which is adversely affected by the decision shall have until (August 11, 1986) to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (160), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-15519 Filed 7-9-86; 8:45 am]

BILLING CODE 4310-JA-M

Arizona; Filing of Plats of Survey

July 1, 1986.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing a dependent resurvey of a portion of the north and east boundaries and a portion of the subdivisional lines, and a metes-and-bounds survey in Section 1, Township 11 North, Range 21 East, Gila and Salt River Meridian, Arizona, was accepted June 5, 1986 and was officially filed June 9, 1986.

This plat was prepared at the request of the U.S. Forest Service, Apache-Sitgreaves National Forest Office.

A plat (in four sheets) representing a dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, and a survey of subdivisions of sections 4, 15 and 23, and the metes-and-bounds survey of certain lots within sections 4, 9, 15, 16, 20, 21 and 23, Fractional Township 13 North, Range 20 West, Gila and Salt River Meridian, Arizona, was accepted May 29, 1986 and was officially filed May 30, 1986.

This plat was prepared at the request of the Bureau of Land Management, Yuma District Office.

A plat (in two sheets) representing a dependent resurvey of a portion of the subdivisional lines, and a survey of Tract Nos. 37 through 42, Township 4 South, Range 2 East, Gila and Salt River Meridian, Arizona, was accepted April 30, 1986 and was officially filed May 1, 1986.

A plat (in two sheets) representing a dependent resurvey of a portion of the subdivisional lines, and a survey of Tract Nos. 37 through 42, Township 4 South, Range 3 East, Gila and Salt River Meridian, Arizona, was accepted April 30, 1986 and was officially filed May 1, 1986.

A plat representing a dependent resurvey of a portion of the subdivisional lines in Township 4 South, Range 4 East, Gila and Salt River Meridian, Arizona, was accepted April 30, 1986 and was officially filed May 1, 1986.

These plats were prepared at the request of the Bureau of Indian Affairs, Phoenix Office.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

Jerrold E. Knight,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 86-15521 Filed 7-9-86; 8:45 am]

BILLING CODE 4310-32-M

New Mexico; Filing of Plat Survey

July 3, 1986.

The plats of surveys described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on July 3, 1986.

The following surveys representing:

A dependent resurvey of a portion of the south boundary of the Felipe Tafoya Grant, a portion of the rejected east boundary of the Felipe Tafoya Grant and subdivisional lines and the subdivision of sections 19 and 29, T. 15 N., R. 6 W., NMPM, NM;

A dependent resurvey of a portion of the rejected west boundary of the Felipe Tafoya Grant, a portion of the subdivisional lines and the subdivision of sections 9, 11, 22 and 28, T. 15 N., R. 7 W., NMPM, NM;

A dependent resurvey of a portion of the south, east, west and north boundaries, a portion of the subdivisional lines and the subdivision of sections 5, 7, 17, 22, 28 and 34, T. 15 N., R. 8 W., NMPM, NM;

A dependent resurvey of a portion of the west and north boundaries of the rejected Felipe Tafoya Grant, a portion of the south boundary, a portion of the subdivisional lines and subdivision of sections 23, 27, 33 and 35, T. 16 N., R. 7 W., NMPM, NM;

A dependent resurvey of a portion of the south and west boundaries, a portion of the subdivisional lines and the subdivision of sections 31, T. 16 N., R. 8 W., NMPM, NM; all executed under Group 856, New Mexico.

This survey was requested by the State Director, New Mexico State Office, Santa Fe, NM.

The plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plats may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 86-15522 Filed 7-9-86; 8:45 am]

BILLING CODE 4310-FB-M

[NM-010-06-4111-09; NM-010-0114]

Albuquerque District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of District Advisory Council Meeting.

SUMMARY: The Bureau of Land Management's (BLM) Albuquerque District Advisory Council will meet on Monday, August 11, 1986, at 10 a.m., in the new BLM Albuquerque District Office Building located at 435 Montano NE. in Albuquerque, New Mexico.

The Council will receive an update on the activities of the Rio Grande Technical Review Team. The Council formed the Team at its last meeting to explore in depth the controversy surrounding recreational use of the Rio Grande near the village of Pilar, New Mexico

Other items on the agenda include updates on several Bureau programs including current district planning efforts, the EIS currently being developed to study impact of the proposed Molycorp Molybdenum Tailings Disposal facility near Questa, New Mexico, river rafting on the Rio Chama, and other programs. The Council will then develop its plans to explore important issues during the next year.

The Council will elect its Chairman and Vice-Chairman for 1986.

The District Advisory Council is managed in accordance with the Federal Land Policy and Management Act of 1976, the Federal Advisory Committee Act of 1972, and the Rangeland Improvement Act of 1976. Minutes of the meeting will be made available for review within 30 days following the meeting.

For additional information, contact R. Alan Hoffmeister, Public Affairs Specialist, P.O. Box 6770, Albuquerque, New Mexico 87197-6770, (505) 766-2328.

L. Paul Applegate,

District Manager.

[FR Doc. 86-15520 Filed 7-9-86; 8:45 am]

BILLING CODE 4310-FB-M

Susanville District Advisory Council Call for Nominations

AGENCY: Susanville District Advisory Council, Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: In accordance with Pub. L. 94-579 (FLPMA), a notice of District Advisory Council call for nominations will be held until the date listed below.

DATE: July 31, 1986 at close of business.

ADDRESS: Bureau of Land Management, 705 Hall Street, Susanville, CA 96130.

SUPPLEMENTARY INFORMATION: The Susanville District Manager of the Bureau of Land Management announced a call for public nominations for membership on the District's Advisory Council.

Members of the public and interested organizations are to forward to the District Manager by July 31, 1986 their suggestions for persons to fill three positions on the council—Transportation/Rights-of-Way, Wildlife and Renewable Resources.

Terms are for a three year period, beginning January 1, 1987 and ending December 31, 1989.

Current council members filling the expiring terms are eligible for reappointment to an additional term and may be renominated for such.

The council serves in an advisory capacity to the District Manager regarding planning and management of the public lands resources within the district. All appointments are made by the Secretary of the Interior, with appropriate recommendations from the BLM California State Director and Susanville District Manager.

As determined by the Federal Advisory Committee Act of 1972, membership of the councils is to be balanced in terms of points of view and functions to be performed. To achieve this balance, members are selected to offer advice on eight categories of interest: Elected General Purpose Government, Environmental Protection, Non-Renewable Resources, Public-at-Large, Recreation, Renewable Resources, Transportation/Rights-of-Way, and Wildlife.

Nominations should include the name and address, telephone number, biographical sketch, and category of interest in which the nominee appears best qualified to offer advice. Nominations should be sent to Rex Cleary, District Manager, Susanville District, Bureau of Land Management, 705 Hall Street, Susanville, California 96130.

Robert J. Sherve,

Acting District Manager.

[FR Doc. 86-15627 Filed 7-9-86; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On April 3, a notice was published in the **Federal Register** (Vol. 51, No. 64) that an application had been filed with the Fish and Wildlife Service by Hubbs Marine Research Institute (PRT-705521) for a permit to take 165 Alaskan sea otters (*Enhydra lutris*) in the course of developing capture and herding techniques.

Notice is hereby given that on June 17, 1986, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fish and Wildlife Service issued a permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Office in Room 605, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: July 3, 1986.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-15607 Filed 7-9-86; 8:45 am]

BILLING CODE 4310-55-M

Office of Surface Mining Reclamation and Enforcement

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's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone 395-7313.

Title: Requirements for Permits and Permit Processing, 30 CFR Part 773

Abstract: Sections 510 and 513 of Pub. L. 95-87 require procedures for public participation and approval or disapproval of the permit application. The information is used by the regulatory authority in evaluating the permit application.

Bureau Form No.: None

Frequency: On occasion

Description of Respondents: Coal Mine Operators

Annual Responses: 5,950

Annual Burden Hours: 23,972

Bureau Clearance Officer: Darlene Grose Boyd 343-5447.

Dated: July 1, 1986.

Carson W. Culp,

Assistant Director, Budget and Administration.

[FR Doc. 86-15523 Filed 7-9-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF JUSTICE

Agency Information Collection(s) Under OMB Review

July 8, 1986.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: the name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); the office of the agency issuing the form; the title of the form; the agency form number, if applicable; how often the form must be filled out; who will be required or asked to report; an estimate of the number of responses; an estimate of the total number of hours needed to fill out the form; an indication of whether section 3504(h) of Pub. L. 96-511 applies; and, the name and telephone number of the person or office responsible for the OMB review. Copies of the proposal form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry *AND* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer *AND* the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633-4312

New Collection

(1) Larry E. Miesse, 202/633-4312
(2) Bureau of Justice Statistics, Office of Justice Programs, Department of Justice
(3) National Crime Survey (Reinterview Only)
(4) NCS-1, NCS-2, NCS-7, NCS-500, NCS-541, NCS-542, NCS-543
(5) Annually
(6) Individuals or households. The National Crime Survey is a program for gathering, analyzing, publishing and disseminating statistics on the kinds and amounts of crime committed against households and individuals throughout the Country.
(7) 7,200 respondents
(8) 1,506 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) Larry E. Miesse, 202/633-4312
(2) Bureau of Justice Assistance, Office of Justice Programs, Department of Justice
(3) Criminal Justice Block Grants
(4) N/A
(5) Annually
(6) State or local governments. Information will be collected to comply with requirements of the Justice Assistance Act, that states and local recipients of block grant funds submit performance reports.
(7) 1,300 respondents
(8) 1,300 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395-4814

Larry E. Miesse,

Clearance Officer, Department of Justice.

[FR Doc. 86-15608 Filed 7-9-86; 8:45 am]

BILLING CODE 4410-18-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Northwestern States Portland Cement Co.

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that on June 30, 1986, a proposed Consent Decree in *United States* v. *Northwestern States Portland Cement Company*, Civil Action No. IC 84-3031, was lodged with the United States District Court for the Northern District of Iowa. The complaint filed by the United States alleged violations of the Clean Air Act by Northwestern due to its failure to comply with the fugitive dust standards set forth in the Iowa State Implementation Plan, Iowa Administrative Code Regulation 23.3(2)c(2), at its Mason City, Iowa facility. The complaint sought injunctive relief and civil penalties. The Consent Decree requires Northwestern to treat its unpaved haul roads and plant site roads with dust suppressants, take steps to abate the emission of dust during waste kiln dust disposal operations, landscape and seed approximately 70 acres of the site, and pay a civil penalty of $50,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments shall be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States* v. *Northwestern States Portland Cement Company*, DOJ ref. 90-5-2-1-654.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Evan L. Hultman, Room 226, Federal Building, 101 1st Street, SE, Cedar Rapids, Iowa 52401 and at the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treausry of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-15525 Filed 7-9-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 86-5]

Aziz M. Gourji; Hearing

Notice is hereby given that on December 5, 1985, the Drug Enforcement Administration, Department of Justice, issued to Aziz M. Gourji, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AG0754665, and deny any pending application for renewal of such registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, July 15, 1986, in Courtroom No. 10, Room 309, U.S.

Claims Court, 717 Madison Place NW., Washington, DC.

Dated: June 26, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-15556 Filed 7-9-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Aerojet Strategic Propulsion Company

By Notice dated May 13, 1986, and published in the **Federal Register** on May 19, 1986; (51 FR 18383), Aerojet Strategic Propulsion Company, Contract Administration Mail Stop 25, Highway 50 at Hazel Avenue, P.O. Box 156996, Sacramento, California 98813, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 30, 1986.

Gene R. Haislip

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

[FR Doc. 86-15557 Filed 7-9-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Janssen Inc.

By Notice dated May 13, 1986, and published in the **Federal Register** on May 19, 1986; (51 FR 18383), Janssen Inc., P.O. Box JPH, State Road 933 KM 01 Mamey Ward, Gurabo, Puerto Rico 00658, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Sufentanil (9740), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: June 30, 1986.

Gene R. Haislip

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

[FR Doc. 86-15558 Filed 7-9-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; First State Chemical Company, Inc.

By Notice dated May 13, 1986, and published in the **Federal Register** on May 19, 1986; (51 FR 18383), McNeilab Inc., DBA First State Chemical Company Inc., 803 East Fourth Street, Wilmington, Delaware 19801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Morphine (9300)	II
Thebaine (9333)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 30, 1986.

Gene R. Haislip,

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

[FR Doc. 86-15560 Filed 7-9-86; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Registration; First State Chemical Company, Inc.

By Notice dated May 13, 1986, and published in the **Federal Register** on May 19, 1986; (51 FR 18383), McNelab Inc., BDA First State Chemical Company Inc., 803 East Fourth Street, Wilmington, Delaware 19801 made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw opium (9600)	II
Concentrate of poppy straw (9670)	II

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 30, 1986.

Gene R. Haislip,

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

[FR Doc. 86-15559 Filed 7-9-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Task Force on Economic Adjustment and Worker Dislocation; Meeting

Notice is hereby given that the Task Force on Economic Adjustment and Worker Dislocation will hold its third meeting at 10:00 a.m. On Tuesday, July 22, 1986, in Room C-5515—Seminar Room 6, 200 Constitution Avenue NW., Washington, DC 20210. The public is invited to attend.

The purpose of the meeting is to discuss and ratify subcommittee progress. A presentation will also be made by a representative of the Canadian Industry Adjustment Service.

For further information contact: Mr. Gerald Holmes, U.S. Department of Labor, Room S-5014, Washington, DC 20210, (202) 523-7571.

Signed at Washington, DC, this 7th day of July 1986.

Michael E. Baroody,

Assistant Secretary for Policy.

[FR Doc. 86-15554 Filed 7-9-86; 8:45 am]

BILLING CODE 4510-23-M

LIBRARY OF CONGRESS

Changes in Hours of Service

AGENCY: Library of Congress.

ACTION: Notice.

SUMMARY: Notice is issued to inform the public that, effective Thursday, July 10, 1986, the Library of Congress will return to the hours of public service in effect March 9 of this year. Evening hours of service and Sunday and holiday service

will be resumed. The hours of service in the general reading rooms will be from 8:00 a.m. to 9:30 p.m. Monday through Friday, from 8:30 a.m. to 5:00 p.m. Saturday, and from 1:00 p.m. to 5:00 p.m. Sunday and holidays. Further information regarding hours of service in the special reading room and other reader facilities can be obtained by a telephone call (202) 287–6400.

Dated: July 3, 1986.

Glen A. Zimmerman,

Associate Librarian for Management.

[FR Doc. 86–15507 Filed 7–9–86; 8:45 am]

BILLING CODE 1410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86–47]

NASA Wage Committee Renewal

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of renewal.

SUMMARY: Pursuant to section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, NASA has determined that the Renewal of the NASA Wage Committee is in the public interest in connection with the performance of duties imposed upon NASA by law.

FOR FURTHER INFORMATION CONTACT: Deborah C. Green, National Aeronautics and Space Administration, Code NPC, Washington, DC 20546 (202/453–2622).

SUPPLEMENTARY INFORMATION: The function of this Committee is to provide recommendations to NASA relating to a survey of wages and the establishment of wage schedules for trades and labor employees in the Cleveland, Ohio, Wage area. NASA has been designated as the "lead agency" for that area under Federal Personnel Manual Supplement 532–1.

Dated: July 2, 1986.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 86–15496 Filed 7–9–86; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Availability of Draft Generic Technical Position on Groundwater Travel Time

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has completed the draft Report "Generic Technical Position on Ground Water Travel Time".

DATE: The comment period expires September 8, 1986.

ADDRESSES: Send comments to John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop 4000MNBB, Washington, DC 20555. Copies of this document may be obtained free of charge upon written request to Linda Luther, Docket Control Center, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail-Stop 623–SS, Washington, DC, 20555, (301) 427–4426.

FOR FURTHER INFORMATION CONTACT: Mike Fliegel, Section Leader, Geotechnical Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail-Stop 623–SS, Washington, DC, 20555, (301) 427–4094.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act 1982 (Pub. L. 97–425) and Commission Regulation 10 CFR Part 60 promote interaction between Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These interactions are to fully inform DOE about the level of information that must be provided in a license application to allow a licensing decision to be made by the NRC.

The principle mechanism for providing guidance to the DOE is completion by the NRC staff of Site Characterization Analyses. (SCA's) which document staff reviews of DOE Site Characterization Plans (SCP's) submitted according to the Nuclear Waste Policy Act and 10 CFR Part 60. Additional means have been developed to supplement the guidance provided in the SCA's. These include staff technical positions on both generic and site specific issues. Generic Technical Positions (GTP's) establish the staff's position on broad technical issues that would be applicable to any site. Site Technical Positions (STP's) establish the staff's position on a site specific technical issue.

Staff technical positions will be issued in a manner intended to provide the NRC staff with the benefit of outside comment. At an appropriate stage in the development of each technical position, notice of availability will be published in the **Federal Register** and copies will be placed in the Public Document Rooms and distributed to DOE, host states and potentially affected tribes for comment. Interested members of the general public will be able to obtain copies upon request and will be encouraged to comment. At the close of the comment period (normally 60 days), the staff will consider the comments received and issue a final position.

This announcement is a notice of availability for the Generic Technical Position (GTP) and solicits comments on the draft Report, "Generic Technical Position on Groundwater Travel Time." In the GTP, the NRC staff provides guidance on the determination of the pre-waste-emplacement groundwater travel time along the fastest path of likely, radionuclide travel from the disturbed zone to the accessible environment (10 CFR 60.113(a)(2). The staff solicits specific comments on the draft in two particular areas:

1. Should matrix diffusion be considered in the definition of groundwater travel time? Arguments for and against such a definition are covered in Section 1.1.

2. The criterion for acceptance of the groundwater travel time is based on a percentile of the cumulative distribution function. A rationale for the choice of the percentile cutoff is discussed in Section 2.4, but the numerical value is left to the user. Is it appropriate to specify a numerical criterion for the percentile; e.g., 15% in this GTP?

Dated at Silver Spring, Maryland, this 1st day of July 1986.

For the Nuclear Regulatory Commission.

John J. Linehan,

Acting Chief, Repository Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 86–15611 Filed 7–9–86; 8:45 am]

BILLING CODE 7590–01–M

Availability of Draft Generic Technical Position on the Interpretation and Identification of the Extent of the Disturbed Zone in the High Level Waste Rule.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has completed the draft Report "Generic Technical Position: Interpretation and Identification of the Extent of the Disturbed Zone in the High Level Waste Rule (10 CFR Part 60).

DATE: The comment period expires September 8, 1986.

ADDRESSES: Send comments to John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear

Regulatory Commission, Mail Stop 4000MNBB, Washington, DC 20555. Copies of this document may be obtained free of charge upon written request to Linda Luther, Docket Control Center, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail-Stop 623-SS, Washington, DC, 20555, (301) 427–4426..

FOR FURTHER INFORMATION CONTACT: Mike Fliegel, Section Leader, Geotechnical Branch, Division of Waste Management, U.S Nuclear Regulatory Commission, Mail-Stop 623-SS, Washington, DC, 20555, (301) 427–4094.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act 1982 (Pub. L. 97–425) and Commission Regulation 10 CFR Part 60 promote interact between Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These interations are to fully inform DOE about the level of information that must be provided in a license application so as to allow a licensing decision to be made by the NRC.

The principal mechanism for providing guidance to the DOE is completion by the NRC staff of Site Characterization Analyses (SCA's) which document staff reviews of DOE Site Characterization Plans (SCP's) submitted according to the Nuclear Waste Policy Act and 10 CFR Part 60. Additional means have been developed to supplement the guidance provided in the SCA's. These include staff technical positions on both generic and site specific issues. Generic Technical Positions (GTP's) establish the staff's position on broad technical issues that would be applicable to any site. Site Technical Positions, (STP's) establish the staff's position on a site specific technical issue.

Staff technical positions will be issued in a manner intended to provide the NRC staff with the benefit of outside comment. At an appropriate stage in the development of each technical position, notice of availability will be published in the **Federal Register** and copies will be placed in the Public Document Rooms and distributed to DOE, host states and potentially affected tribes for comment. Interested members of the general public will be able to optain copies upon request and will be encouraged to comment. At the close of the comment period (normally 60 days), the staff will consider the comments received and issue a final position.

This announcement is a notice of availability for a Generic Technical Positon (GTP) and solicits comments on the draft Report. "Generic Technical Position: Interpretation and Identification of the Extent of the Disturbed Zone in the High Level Waste Rule (10 CFR Part 60)." In the GTP, the NRC staff clarifies the disturbed zone definition (10 CFR 60.2) based on additional studies since the publication of 10 CFR Part 60. The GTP discusses the disturbed zone concept and provides guidance for the identification of its extent.

Dated at Silver Spring, Maryland, this 1st day of July 1986.

For the Nuclear Regulatory Commission.

John J. Linehan,

Acting Chief Repository Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 86–15612 Filed 7–9–86; 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 review of information collection.

SUMMARY: Nuclear Regulatory Commission 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:

—DOE/NRC Forms 741 & 741A—Nuclear Material Transaction Report and NUREG/BR–0006, instructions for completing forms 741, 741A, and 740M

—DOE/NRC Form 740M—Concise Note

—IAEA Form N–71—Design Information Questionnaire

3. The form number if applicable: Same as item 2 above.

4. How often the collection is required:

—DOE/NRC Form 741/741A: As occasioned by special nuclear material (SNM) or source material transfers, receipts, or inventory changes that meet certain criteria.

—DOE/NRC Form 740M: When specified in Facility Attachments or Transitional Facility Attachments, or as necessary to inform the U.S. or IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the US/IAEA Safeguards Agreement.

—IAEA Form N–71: Once.

6. An estimate of a number of responses:

—DOE/NRC Form 741/741A: 24,000

—DOE/NRC Form 740M: 2,580

—IAEA Form N–71: 2

7. An Estimate of the total number of hours needed to complete the requirement or request:

—DOE/NRC Form 741/741A: 24,000

—DOE/NRC Form 740M: 2,580

—IAEA Form N–71: 720

8. An indication of whether section 3504 (h), Pub. L. 96–511 applies: Not Applicable.

9. Abstract:

—NRC and Agreement State licensees are required to make inventory and accounting reports on DOE/NRC Forms 741/741A for certain source or special nuclear material inventory changes, for transfers or receipts or special nuclear material, or for transfers or receipts of 1 kilogram or more of source material.

—Licensees affected by 10 CFR Part 75 and related sections of Parts 40, 50, 70, and 150 are required to submit DOE/NRC Form 740M to inform the U.S. or the IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the U.S./IAEA Safeguards Agreement.

—Licensees of facilities that appear on the U.S. eligible list, pursuant to the U.S./IAEA Safeguards Agreement, and who have been notified in writing by the Commission, are required to complete and submit Design Information Questionnaire, IAEA Form N–71.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 1st day of July 1986

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration

[FR Doc. 86–15609 Filed 7–9–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-413, 50-414, EA 84-93]

Duke Power Co. (Catawba Nuclear Station, Units 1 and 2); Order Imposing Civil Monetary Penalty

I

Duke Power Company, 422 South Church Street, Charlotte, NC 28242 (the licensee) was the holder of Construction Permit Nos. CPPR 116 and CPPR 117. The licensee is the holder of License Nos. NPF-35 and NPF-48 issued by the Nuclear Regulatory Commission (the Commission or NRC) on January 17, 1985 and February 24, 1986. The licenses authorize the licensee to operate the Catawba Nuclear Station, Units 1 and 2, in York County, South Carolina, in accordance with the conditions specified therein.

II

As a result of its review of the record developed before an Atomic Safety and Licensing Board in the operating license hearing, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was served upon the licensee by letter dated August 13, 1985. The NOV stated the nature of the violation, the provision of the Nuclear Regulatory Commission requirements that the licensee had violated, and the amount of civil penalty proposed for the violation. The licensee responded to the NOV on October 1, 1985. Upon consideration of the licensee's response, and the statements of fact, explanations, and arguments for remission or mitigation of the proposed civil penalty contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement, has determined that a civil penalty in the amount of Twenty Thousand Dollars ($20,000) should be imposed.

III

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Twenty Thousand Dollars ($20,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

IV

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the hearing request shall also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

V

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty; and

(b) Whether, on the basis of such a violation, this Order should be sustained.

Dated at Bethesda, Maryland, this 30th day of June 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

With a letter dated October 1, 1985, from Mr. W.H. Owen to the Director, Office of Inspection and Enforcement, the licensee submitted a response to the Notice of Violation and Proposed Imposition of Civil Penalty issued by the Director, Office of Inspection and Enforcement, on August 13, 1985. The Licensee denied the violation set forth in the Notice of Violation and Proposed Imposition of Civil Penalty and requested remission of the proposed civil penalty on that and other grounds. Following the restatement of the violation, a synopis of the licensee's arguments and the NRC staff's evaluation of the licensee's response is given below.

Restatement of Violation

10 CFR 50.7 prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. The activities protested include reporting of quality assurance discrepancies and nuclear safety problems by an employee to his employer.

Contrary to the above, Duke Power Company discriminated against Cary E. "Beau" Ross, who was engaging in a protected activity as a licensee quality control inspector. Mr. Ross had been given low November 1982 interim and 1982-83 performance ratings because of his efforts to bring safety concerns to the attention of Duke Power Company's management.

This is a Severity Level II violation (Supplement VII). (Civil Penalty—$84,000).

Summary of the Licensee's Response

The licensee denied the violation and raises a number of defenses in support of its position. Some of the licensee's arguments were raised in its April 22, 1985 response to a § 2.206 petition related to this enforcement action and, consequently, these arguments were addressed in the Director's decision under 10 CFR 2.206, which ultimately led to issuance of the Notice of Violation and Proposed Imposition of Civil Penalty. *See generally* DD-85-9, 21 NRC 1759 (1985). The licensee's defenses against the violation are, primarily: (1) The incident was an isolated incident that had no impact on public health and safety; (2) since the incident had no impact on public health and safety, the NRC is without jurisdiction to find a violation; (3) the NRC lacks authority to find a violation of § 50.7 absent a prior determination by the U.S. Department of Labor that the licensee had violated 210 of the Energy Reorganization Act; (4) the NRC staff erred in relying on the record developed by the Atomic Safety and Licensing Board as the factual basis for the enforcement action; and (5) the NRC staff misconstrued the legal scope of 10 CFR 50.7 and 210 of the Energy Reorganization Act in finding that a violation had occurred. Each of these arguments is treated in turn below.

NRC Evaluation of Licensee's Response Showing Necessary To Find a Violation

The licensee argued that the Ross incident had no impact on public health and safety and, consequently, the NRC is without jurisdiction to find a violation in the absence of such a nexus with the alleged violation. In support of its assertion that the Ross incident had no impact on public health and safety, the licensee pointed to the record in the operating license proceeding for Catawba regarding harassment and intimidation of quality control workers, including Mr. Ross. In this regard, the licensee emphasized the testimony of Mr. Ross to the effect that he was not deterred from doing his work by the performance appraisals in question and the Board's general conclusion that harassment and intimidation was not a widespread problem at Catawba that seriously affected the quality assurance program. *See* LBP-84-24, 19 NRC 1418, 1444, 1519-20, 1531-32 (1984).

The staff has not alleged that harassment and intimidation of quality assurance personnel was a widespread problem at Catawba. However, the licensee has incorrectly construed the requirements for a finding of a violation of § 50.7 or, for that matter, any other Commission regulation or licensee condition. The licensee would require, in addition to a statement of its

failure to meet its duty under the regulation, a demonstration of a particular impact on public health and safety as a prerequisite to finding a violation of the regulation. While its actual or potential impact on public health and safety affects the seriousness and consequent severity level of a particular violation, a licensee may be cited for a violation solely upon specification of the manner in which it failed to meet the regulation or requirement at issue. No separate showing of actual or potential impact on public health and safety is necessary to sustain the finding of a violation.

Section 50.7, as well as other regulations, is a reflection of the Commission's judgment that a licensee's adherence to the standard of conduct prescribed by the regulation is important to ensuring adequate protection of public health and safety. *See Atlantic Research Corp.*, CLI-80-7, 11 NRC 413, 425 (1980). In promulgating § 50.7 and its other employee protection regulations, the Commission stated the importance to its regulatory responsibilities of protecting employees from discrimination for raising safety isssues:

The Commission, to effectively fulfill its mandate, requires complete, factual, and current information concerning the regulated activities of its licensees. Employees are an important source of such information and should be encouraged to come forth with any items of potential significance to safety, without fear of retribution from their employers.

47 FR 30452 (July 14, 1982). The enactment of 210 of the Energy Reorganization Act reflected congressional judgment that protection of employees who raise safety concerns is important to protection of public health and safety as a whole.

In this case, the NRC staff has alleged those facts that it believes are sufficient to establish a violation of § 50.7.

Authority To Find Violation in Absence of Department of Labor Findings

The licensee argued that no violation of § 50.7 can be found here because the U.S. Department of Labor did not make a prior determination that § 210 of the Energy Reorganization Act was violated. In the licensee's view, the Commission has limited itself to taking enforcement action for violations of § 50.7 to those instances in which the Department of Labor has found a § 210 violation. The licensee also raised this argument in it earlier § 2.206 response. *See* DD-85-9, 21 NRC 1759, 1766-68 (1985).

The licensee's view of § 50.7 misperceives the complementary, yet independent, authorities and responsibilities of the NRC and the Department of Labor in protecting employees from discrimination and retaliation for raising matters bearing on nuclear safety. Section 210 empowers the Department of Labor to grant remedies directly to employees who have suffered discrimination for engaging in protected activities, but what statute did not limit the Commission's pre-existing authority under the Atomic Energy Act to investigate alleged discrimination and take action to combat it. *Union Electric Co.* (Callaway Plant, Units 1 & 2), ALAB-527, NRC 126, 132-39 (1979); 124 Cong. Rec. S 15318 (daily ed. Sept. 18, 1978) (remarks of Sen. Hart). Nothing in § 50.7 or the accompanying Statements of Consideration expressly limits the exercise of NRC's independent authority to enforce its own regulations only to those circumstances in which the Department of Labor has acted. The comments cited by the licensee from the Statements of Consideration for § 50.7 were made only in context of: (1) Emphasizing that employee discrimination could result in Commission sanctions as well as awards by the Department of Labor to compensate a wronged employee and (2) rejecting a proposal that the Commission provide, in its rules, sanctions against individuals who made frivolous complaints to harass an employer.

The licensee suggested that the NRC can bring, in any event, enforcement actions for violations of 10 CFR Part 50, Appendix B (particularly of Criterion I, which requires organizational freedom and independence for quality assurance personnel) to protect public health and safety from the potential harm caused by a licensee's wrongful actions against employees. The licensee did not explain why the Commission must elect to proceed under Appendix B in discrimination where no complaint under section 210 is filed or the Department of Labor does not reach the merits of the complaint, but may proceed under § 50.7 on the same facts only if the Department of Labor decides the merits of a complaint in favor of an employee. While Appendix B to Part 50 and § 50.7 are complementary, neither regulation nor Commission policy requires the election suggested by the licensee. The instance cited by the licensee in which the staff proceeded under Criterion I to Appendix B was based on facts that occurred prior to the effective date of § 50.7, and Appendix B was the only legal basis on which the Commission could proceed at that time.

The licensee also cited a memorandum of the former Executive Legal Director commenting on a bill containing the provision that became section 210. It is difficult to understand how that memoradum, written about the earlier legislation, it particularly pertinent to Commission regulations adopted four years later. The memorandum was written in the context of posing the question whether the Commission should administer the remedies provided directly to the employees under section 210. The same memorandum acknowledges the NRC's power to take appropriate enforcement action, including civil penalties, against licensees for discrimination. In fact, Commission regulations prohibited discrimination against workers who worked under radiological conditions *before* section 210 was enacted. *See* 10 CFR 19.16(c) (1978) (promulgated in 1973); *see also Union Electric Co., supra*, 9 NRC at 136.

To be sure, the Commission recognizes the importance of coordinating its efforts with the Department of Labor to ensure effective protection of employees from discrimination for raising nuclear safety concerns. To that end the agencies have entered into a Memorandum of Understanding. 47 FR 54585 (Dec. 3, 1982). Nonetheless, the Commission is not required to forego enforcement of its anti-discrimination rules because the Department of Labor has not acted on a complaint.

Sufficiency of the Evidence of the Violation

The licensee did not offer any new factual information to the record developed before the Licensing Board and discussed in the Board's decision. Instead, the licensee argued that the staff is not entitled to rely on the record before the Board or its findings because the Board was not charged with determining a violation. The licensee asserted that the record is incomplete on the subject and that the licensee was concerned with showiing in the licensing proceeding only that its quality assurance program was effective rather than in rebutting the alleged discrimination. The licensee argued that neither the Board's findings nor the evidence would support a finding of a violation under the standards applied in other federal discrimination cases.

The staff recognizes, as it did in the section 2.206 decision, that a determination of a § 50.7 violation was not central to the Board's decision on the issue of whether the licensee should have received a license for the Catawba Nuclear Station. *See* DD-85-9, *supra*, NRC at 1768-69. Nonetheless, the Licensing Board received a substantial amount of documentary and testimonial evidence regarding the treatment of Mr. Ross. The staff may reasonably rely, as it did here, on such evidence and the conclusions drawn from it by the Board in determining whether to initiate separate enforcement proceedings. Reliance on such evidence is little different from the staff's reliance on the results of inspections or investigations as a basis for taking enforcement action. The licensee has a full opportunity under 10 CFR 2.205 to convince the staff or the presiding officer in the enforcement proceeding that the evidence is not sufficient to support the violation.

The licensee suggested that the record was incomplete, yet it offered no other evidence to complete that record. The licensee suggested that the Board (and, for that matter, any other agent of the Commission) lacked sufficient expertise to give a true assessment of the facts, yet the licensee did little to demonstrate specifically how the evidence developed by the Board would lead to a finding of no violation. The licensee has not explained why Mr. Ross' evaluations were proper. The staff believes, based on the available evidence which includes the evidence before the Licensing Board, that the preponderance of evidence indicates that Mr. Ross received unfair performance appraisals for raising safety concerns and that the evidence is sufficient to proceed with imposition of a civil penalty for the violation.

Internal Safety Complaints are Within the Scope of "Protected Activities" Under 10 CFR 50.7

The licensee disputed the NRC's view that "protected activities" under § 50.7, as well as under section 210 of the Energy Reorganization Act, include the reporting of quality assurance discrepancies and nuclear safety problems by an employee to his employer. The licensee argues that an

employee must contact the NRC "or some other competent organization of government." The licensee based its view on the decision of the U.S. Court of Appeals for the Fifth Circuit in *Brown & Root, Inc. v. Donovan*, 747 F.2d 1029 (5th Cir. 1984), in which that court held that "employee conduct which does not involve the employee's contact or involvement with a competent organization of govenrment is not protected" under section 210 of the Energy Reorganization Act. 747 F.2d at 1036.

As indicated in the section 2.206 decision related to this case (DD-85-9, 21 NRC at 1764-66), the Commission believes that the better view of "protected activities" under section 210 is that employees are protected from retaliation and discrimination under the statute for purely internal safety activities that involve no contact with representatives of the Commission. The Ninth Circuit and, more recently, the Tenth Circuit Court of Appeals have adopted this construction of section 210 and have rejected the analysis of the Fifth Circuit. *See Mackowiak v. University Nuclear Systems, Inc.*, 735 F.2d 1159, 1162-63 (9th Cir. 1984); *Kansas Gas and Electric Co. v. Brock*, 780 F.2d 1505, 1510-12 (10th Cir. 1985). The Commission follows this view in the application of its own employee protection regulations such as 10 CFR 50.7. Although Mr. Ross apparently did not contact NRC representatives prior to his receipt of the poor performance appraisals, such actions are not a necessary element to the finding of a violation under § 50.7.

Summary of Licensee's Request for Mitigation of Civil Penalty

In its separate response to the Notice of Violation and Proposed Imposition of Civil Penalty, the licensee urged the staff to withdraw or substantially mitigate the proposed penalty on a number of grounds. As discussed above, the licensee denied the violation. The licensee also argued that the violation was an isolated event that had no effect on quality assurance personnel, that the violation was improperly catgegorized at Severity Level II, that corrective actions have long been in effect for the violation, and that other extenuating circumstances warrant mitigation or remission of the penalty. Each of these arguments is addressed below in turn.

NRC Evaluation of Licensee's Request Propriety of the Severity Level II Classification

Although the licensee acknowledged that violations which involve "action by plant management above first-line supervision in violation of section 210 of the ERA against an employee" may be categorized at Severity Level II under Supplement VII to the enforcement policy, the licensee believed that this classification was inappropriate in this instance because there was no impact on the public from this violation. The licensee also argued that the classification was inappropriate because there has been no § 210 adjudication by the Department of Labor in this case, which the licensee interprets the Supplement to contemplate.

The facts alleged in this case fit example B.4 in Supplement VII to the enforcement policy. The improper performance evaluations were made by persons who serve in positions above first-line supervision. (Mr. Ross was himself a supervisor, being a foreman over a group of welding inspectors). Thus, the violation is like the example in the enforcement policy. Whether or not there has been a Department of Labor adjudication under section 210 is of no consequence to the selection of the severity level here. Although the enforcement policy uses section 210 in the descriptions of examples of Severity Level II violations in Supplement VII, the description is, as the licensee acknowledges, only an example and a violation need not reflect an example in every detail to be classified at that severity level. Here, the violation was of the type generally described in the policy, and the Severity Level II classification was made appropriately on the basis of the example.

The staff recognizes that the Ross incident was a relatively isolated event, that the quality assurance and control program worked generally well at Catawba, and that the poor performance evaluations may not have deterred Mr. Ross from performing his duties. The fact that the violation occurred at the management level that it did made the violation of significant concern to the NRC. Although the licensee's conduct may not have actually deterred Mr. Ross, this fortuitous circumstance would not normally cause a reduction of the severity level.

However, the fact that the Ross incident was a relatively isolated event, and that the licensee's management of the quality assurance and control program was generally good are persuasive in determining that the severity level of this violation should be reduced. The enforcement policy recognizes that the regulation of nuclear activities does not lend itself to a mechanistic treatment and that the Director, IE must exercise judgment and discretion in determining the severity levels of violations. On reevaluation of the particular facts in this incident, the staff has concluded, though the violation could be classified at Severity Level II, that Severity Level III is the appropriate classification for this violation. Reduction of the severity level in itself warrants a reduction of the proposed civil penalty to $40,000, the base civil penalty for a Severity Level III violation at the time this violation occurred.

Mitigation for Corrective Action

The licensee relied on its corrective actions for general harassment and intimidation concerns at Catawba in arguing for mitigation of the penalty. The licensee stated that it took prompt and substantial actions prior to the operating license hearings and the issuance of the Board's decision to investigate and resolve concerns raised by welding inspectors at Catawba regarding their treatment by management. The licensee's actions, which arose out of its welding inspector task forces, included assignment of an employee relations assistant to the quality assurance department, initiation of employee forums with second-level supervisors, issuance of the formal recourse procedure, training of supervisors in communications skills, and instructions to supervisors that retaliation would not be tolerated. The licensee cited testimony of welding inspectors that conditions had improved at Catawba as a result of the licensee's actions. The licensee also emphasized that the Board did not require remedial action with respect to Mr. Ross' evaluations, but only required revision of the licensee's antiharassment policy to improve a lack of clarity, which the licensee suggests stemmed "as much from inadequate staff guidance concerning the protection of employees from harassment or discrimination as from any failure by Duke to mitigate prompt and extensive corrective action." Response at 12. The licensee asserted that it purged Mr. Ross' personnel file of the retaliatory evaluations on its own initiative. The old evaluations are being kept in a separate sealed file, the licensee explains, solely to preserve evidence for any potential collateral litigation involving Mr. Ross.

The staff had previously drawn a negative inference from the licensee's retention of Mr. Ross' initial appraisal in a separate sealed file. Based on the plausible explanation given by the licensee, the staff believes that the negative inference was unwarranted. On reevaluation of the licensee's prompt and voluntary actions to remove the cloud regarding Mr. Ross' appraisals at Catawba, and its actions generally to ensure that workers' concerns are acted upon without reprisal, further mitigation of the proposed civil penalty to $20,000 is appropriate for prompt and extensive corrective actions. This amount reflects a 50% reduction of the base civil penalty of $40,000 for a Severity Level III violation.

Mitigation for Other Policy Reasons

The licensee also argued against imposition of a civil penalty because licensees will decline to discipline employees if they may be subject to NRC proceedings based on "isolated violations" of § 50.7 which have not been considered initially by the Department of Labor. The licensee also suggested that taking enforcement action here on the basis of the record developed in the licensing proceeding will lead to protracted licensing hearings, because licensees will be encouraged to litigate ancillary issues in licensing proceedings to avoid subsequent enforcement proceedings. Neither of these arguments are persuasive. The licensee in effect suggests that employers will decline to discipline employees for legitimate reasons, because discipline may lead to NRC enforcement proceedings. However, employers have to fear NRC enforcement sanctions only where their actions against employees are based on impermissible discrimination. The NRC has no intention of becoming a roving watchdog over the day-to-day workings of employee-management relations, but it is vitally concerned where management crosses the line and disciplines employees for raising safety concerns.

The licensee's assertion that the licensing process will be adversely affected is speculative at best. If a matter is truly ancillary to the licensing proceeding, the Board may limit its inquiry as it sees fit. Licensees have an opportunity to be heard on all NRC enforcement actions under Subpart B

to 10 CFR Part 2 if the staff imposes sanctions, and, therefore, no particular need or incentive should exist for licensees to defend against truly collateral issues in a licensing proceeding.

Mitigation for Other Extenuating Circumstances

The licensee points to several other circumstances in arguing that the civil penalty should be mitigated. The licensee states that the Ross incident was isolated, that it had no effect on public safety, and that quality control personnel did their tasks properly. The licensee also emphasized that any problems involving harassment or intimidation of workers were confronted and resolved in 1982 and 1983. In view of these circumstances, the licensee argued that a civil penalty here will not positively affect the conduct of this licensee or other similarly situated persons. The staff has considered the licensee's arguments regarding the isolated nature of the incident and its effect on the public health and safety and on other quality control personnel in determining the severity level of the violation and in mitigating the penalty by 50 percent and has determined no further mitigation is appropriate.

Conclusion

The violation occurred as stated. For the reasons discussed above, the severity level of the violation has been reduced from a Severity Level II violation to a Severity Level III violation. Further, as discussed above, the proposed civil penalty has been mitigated to $20,000. Accordingly, a $20,000 civil penalty will be imposed.

[FR Doc. 86-15613 Filed 7-9-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-413]

Duke Power Co. et al.; Exemption

I

Duke Power Company, North Carolina Electric Membership Corporation, and Saluda River Electric Cooperative, Inc. (the licensees) are the holders of Facility Operating License No. NPF-35, issued January 17, 1985, which authorizes full power operation of the Catawba Nuclear Station, Unit 1 (the facility) at steady-state reactor power levels not in excess of 3411 megawatts thermal. The facility consists of a pressurized water reactor located in York County, South Carolina.

II

Sections III.D.2 and III.D.3 of Appendix J to 10 CFR Part 50 require that Type B containment penetration electrical and mechanical tests and Type C containment isolation valve tests be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years. The above regulation would have required the performance of the above Type B and C tests between August 19 and August 22, 1986, for the affected penetrations and valves.

III

By letters dated May 5 and 9, 1986, and June 13, 1986, the licensees requested an exemption from the requirements of sections III.D.2 and III.D.3 of Appendix J to 10 CFR Part 50 which would defer, by about six weeks (until September 28, 1986), the performance of Type B tests on all 91 containment electrical penetrations and 9 containment mechanical penetrations, and Type C tests on 14 containment isolation valves. The basis for the exemption is that the extension would allow the licensees to take the station off line at a time consistent with system need for power rather than forcing a station shutdown in August when the distribution system's need for power is high due to the planned outage of other system power plants.

The NRC staff has reviewed the licensees' request for the extension until September 28, 1986. The extension is for a short period, i.e. six weeks. All these tests have yielded successful results when they were performed in the August 19 to 22, 1984, time frame. This facility was issued a low power license on December 6, 1984, and a full power license on January 17, 1985. Thus, these penetrations and valves will, with the proposed extension, have been exposed to their operating environment for no more than 22 months compared to the nominal two year surveillance interval permitted by Appendix J. Therefore, the staff finds that the increased probability of containment leakage associated with the proposed extension is insignificant and that no measurable impact would result from the proposed extension. For the above reasons, the staff finds that the requested exemption is acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1) this temporary exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

The Commission has determined that the special circumstances necessary to support an exemption, described in 10 CFR 50.12 (a)(2)(ii), (a)(2)(iii), and (a)(2)(v) apply to this situation. Application of the Appendix J requirement in this situation for testing at refueling outage or within two years, would not serve the underlying purpose of the regulation, which is to assure testing after every two years of full power operation. Since Unit 1 has not operated at full power for the two years of Cycle 1 due to the testing required by the startup program, the extension of time granted herein does not conflict with the intent of the rule and defers the testing requirement intended by Appendix J to the first refueling outage when Unit 1 will have completed a full power cycle. This complies with the intent of the regulation and comports with the special circumstance described in 10 CFR 50.12(a)(2)(ii). Additionally, a requirement for shutdown to comply with the two year testing requirement in Appendix J would impose a hardship and costs not contemplated by the rule when written since Appendix J clearly indicates an intent that required testing be performed during normal refueling outages except in unusual situations when the two year limit would apply. To require shutdown to comply with the two year limit for testing even though the plant has not accumulated two full power years of operation would result in an unnecessary loss of power to the grid at a time when other plants in the system are scheduled for outages as well as the extra costs attendant to two successive outages, rather than one.

Requiring two outages simply to meet the time limit in Appendix J without acknowledgment of the time of full power operation would create the hardship and excess costs not considered by the regulation as described in 10 CFR 50.12(a)(2)(iii). Finally, the exemption requested is a temporary one which will exist only for about six weeks and which became necessary only because of the delay in full power operation common to initial startup. This request does not result from any negligence on the part of the licensee, who has committed to perform Appendix J testing in the event an unscheduled outage occurs prior to refueling outage for Unit 1. This situation constitutes the special circumstances described in 10 CFR 50.12(a)(2)(v).

Accordingly, the Commission hereby grants a temporary exemption as described in section III above from sections III.D.2 and III.D.3 of Appendix J of 10 CFR Part 50 to defer, by six weeks, the performance of Type B and C tests for the containment penetrations and isolation valves described above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (June 25, 1986, 51 FR 23171).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 3rd day of July 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Acting Director, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-15614 Filed 7-9-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-238]

N.S. Savannah at Patriots Point, SC; Finding of No Significant Environmental Impact Regarding Proposed Renewal of a License:

The Nuclear Regulatory Commission (the Commission) is considering renewing the license authorizing the South Carolina Patriots Point Development Authority and the U.S. Maritime Administration (the licensees) to continue to possess-but-not-operate the reactor on the N.S. Savannah located at Patriots Point, S.C.

The renewal amendment would authorize the licensees to continue to possess-but-not-operate the shutdown, defueled, and secured reactor facility installed on the H.S. Savannah, in accordance with their application date August 20, 1985. Opportunity for hearings was afforded by the Notice of Consideration of Application for Renewal of Possession Only License published in the **Federal Register** on January 6, 1986 at 51 FR 460. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

Finding of No Significant Environmental Impact

The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. The Commission has prepared an Environmental Assessment of this action dated June, 1986, and has concluded that the proposed action will not have a significant effect on the quality of the human environment.

Summary of Environmental Impacts

The environmental impacts associated with the continued possession-only status of the N.S. Savannah are discussed in the Environmental Assessment (EA) associated with this action. The EA concluded that no radioactivity is intentionally released to the environment during normal operations, and there is reasonable assurance of no undetected inadvertent release of radioactivity that would significantly impact the environment.

For detailed information with respect to this proposed action, see (1) the application for license renewal dated August 20, 1985, (2) the Environmental Assessment, and (3) the Safety Evaluation prepared by the staff. These documents and this Finding of No Significant Environmental Impact are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland, this 2nd day of July 1986.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing-B.

[FR Doc. 86-15610 Filed 7-9-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24143]

Filings Under the Public Utility Holding Company Act of 1935; Jersey Central Power & Light Co.

July 3, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statement of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 28, 1986 to the to the Secretary, Securities and Exchange Commission, Washington, DC. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit, or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s) as filed or as amended, may be granted and/or permitted to become effective.

Jersey Central Power & Light Company (70-7263)

Jersey Central Power & Light Company ("Jersey Central"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, a wholly owned subsidiary of General Public Utilities Corporation, a registered holding company, has filed an application with this Commission pursuant to section 6(b) of the Act and Rule 50 thereunder.

Jersey Central proposes to issue and sell for cash, from time to time through December 31, 1987, additional first mortgage bonds ("New Bonds") for a term of 10 to 30 years in an aggregate principal amount of up to $100 million and additional shares of cumulative preferred stock ("New Preferred Stock") having an aggregate stated value not in excess of $100 million. However, the total principal amount would not exceed an aggregate of $150 million.

Jersey Central proposes to sell the New Bonds and New Preferred Stock through competitive bidding pursuant to Rule 50 or, alternatively, in accordance with the Commission's Statement of Policy in HCAR No. 22623 (September 2, 1982), Jersey Central may request at a later date an exception from the competitive bidding requirement in the event that circumstances and market conditions change.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-15582 Filed 7-9-86; 8:45 am]

BILLING CODE 8010-10-M

[File No. 1-6314]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; Perini Corp., Common Stock, Par Value $1.00

July 2, 1986.

The Perini Corporation has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw its common stock from listing and registration on the Boston Stock Exchange ("BSE"). The Company's common stock is also listed and

registered on the American Stock Exchange, Inc. ("Amex").

The reason stated in the application for withdrawing this security from listing and registration includes the following:

The Company is withdrawing its common stock from listing and registration on the BSE to reduce the expenses incurred in connection with the trading of its Common Stock. The Company's common stock will continue to be listed and registered on the Amex.

Any interested person may, on or before July 24, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and that terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-15581 Filed 7-9-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23388; File No. SR-Amex-86-17]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 17, 1986 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("Amex" or "Exchange") proposes to extend the pilot program for the automatic execution of certain Major Market Index (XMI) options for an additional three month period. The details of the proposal are set forth below in Item 3.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In December 1985, the Exchange implemented a pilot program called "AUTO-EX" for the automatic execution of selected Major Market Index (XMI) options. (See Release No. 34-22610, dated November 8, 1985, approving SR-AMEX-85-29.) The pilot was originally instituted on a three-month basis. As a result of highly favorable comments from participating member firms, it was extended in March 1986 for an additional three-month period (See Release No. 34-23063, dated April 1, 1986, approving SR-AMEX-86-8), and the pilot will terminate in June.

Concurrent with this filing, the Exchange is proposing to adopt AUTO-EX on a permanent basis (See SR-AMEX-86-16). However, to permit AUTO-EX to continue on an interrupted basis before Commission action on that proposal, the Exchange herein seeks the authority to continue the pilot program for another three-month period.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by continuing to provide the means of reducing operational burdens in executing and reporting XMI AUTOAMOS orders while maintaining the priority of orders on the limit order book. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization and in particular, the requirements of section 6 and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the pilot has operated to date without technical or other difficulty, and provides a benefit to public customers by reducing the time needed to execute and report certain XMI AUTOMAMOS orders.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 31, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 1, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-15576 Filed 7-9-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23391; File No. SR-CBOE-86-18]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to RAES in S&P 100 Index Options ("OEX")

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 24, 1986, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.

I. Text of the Proposed Rule Change

The Exchange's retail automatic execution system ("RAES") pilot program has been in operation in S&P 100 index options ("OEX") since February 1, 1985. By this rule change, the RAES pilot in OEX will be extended from July 4, 1986 until and including August 1, 1986.

The RAES pilot in OEX will continue as described in SR-CBOE-84-30, and as modified in SR-CBOE-85-14.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The RAES pilot has been highly successful. Customer orders on RAES have been handled efficiently and fairly, with customers' brokers receiving execution reports on RAES orders sometimes within the same minute as the order is entered into the system. The system has been operational over 90 percent of the time that OEX has been open for trading. There have been virtually no complaints regarding RAES or its operation; nor have there been any complaints by customers with orders on the book that they have been disadvantaged by the minor modification to trading priority which the RAES pilot has presented. *See* Part 3 of SR-CBOE-84-30 and SR-CBOE-85-14, wherein the RAES relationship to the Exchange's book priority rule is discussed.

The Exchange believes that the unparalleled success of RAES justifies removing RAES in OEX from pilot status and making it a permanent program, which approval of SR-CBOE-85-32, a related filing, would accomplish. However, because SR-CBOE-85-32 has not yet been approved, the Exchange on an interim basis seeks to continue RAES in OEX on a pilot basis. The pilot of RAES in OEX is currently authorized to continue until July 4, 1986, pursuant to Commission approval of SR-CBOE-86-11. The new proposed rule change would continue the pilot in RAES and OEX for an additional month, to allow the Commission additional time to consider SR-CBOE-85-32.

The Exchange believes that the rule change is consistent with the purposes and provisions of the Securities Exchange Act of 1934, and in particular section 6(b)(5) thereof, in that the proposed rule change offers the potential for improved accuracy, reporting and handling of small public customer orders and timely and cost-efficient executions of small option orders. This will occur by the automated handling of small orders, as well as by permitting those handling orders manually to be able to concentrate on the larger orders.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that an extension of the pilot program through August 1, 1986 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, in particular, sections 6(b)(5) and 11A of the Act.[1] It does not appear that extending the duration of the pilot until this time will impose any undue burdens on public customers of OEX. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the **Federal Register** in that the pilot has been operational since February 1, 1985 and the Commission has not received any comments concerning the pilot which would warrant discontinuing it prior to a Commission determination on the merits of the CBOE's request to accord the pilot permanent status.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[2] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Dated: July 2, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-15577 Filed 7-9-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23395; File No. SR-CBOE-86-19]

Self Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 24, 1986, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized; there are no deletions.

Withdrawal of Approval of Underlying Securities

Rule 5.4. No change.

. . . Interpretations and Policies:

.01-.06 No change.

.07 *Where a class of options contracts is open for trading on another national securities exchange, the Exchange may delist such class of options contracts. Delisting shall be preceded by a notice to member organizations concerning the delisting.*

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[1] 15 U.S.C. 78f and 78k-1 (1982).

[2] 15 U.S.C. 78s(b)(2) (1982)

[3] 17 CFR 200.30-3(a)(12) (1985).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to allow the Exchange to delist a class of option contracts which is also open for trading on another exchange. The amendment is necessary to clarify the Exchange's authority under Rule 5.4 since the rule was not written in contemplation of investors continuing to have the ability to trade the options elsewhere.

The proposed rule change is consistent with the Securities Exchange Act of 1934 and, in particular section 6(b)(5) thereof, in that the proposed rule change allows appropriate market protection for existing and prospective trading interest in options after being delisted by the Exchange under the proposed rule change.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act because the rule change will not impede holders of the affected options classes from closing out their open options positions. The provision effects only multiply traded-options, and thus investors who have established options positions will be able to close their positions in another market. The Exchange states that the proposed rule change is substantively identical to SR–NYSE–86–15 which was recently approved by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the rule change is applicable only to multiply-traded options and is substantively identical to SR–NYSE–86–15.[1] Any option delisted by the Exchange prior to expiration pursuant to this provision also must be available in another market. Accordingly, an alternative marketplace in multiply-traded options still will be available for investors to close out existing positions. Thus, the proposed rule change will not negatively effect the rights of options investors.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 430 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 31, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 2, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86–15578 Filed 7–9–86; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Securities Exchange Act Release No. 23290, June 2, 1986.

[Release No. 34–23396; File No. SR–NSCC–86–03]

Self-Regulatory Organizations; Proposed Rule Change by National Securities Clearing Corp., Relating to an Amendment to National Securities Clearing Corporation's ("NSCC") Rules and Procedures Regarding Stock Loan Rebate Payment and Collection Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 27, 1986, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amend NSCC's SCC Division Rules and Procedures by adding a New Rule, Stock Loan Rebate Payment and Collection Service, as follows:

Stock Loan Rebate Payment and Collection Service

Rule 53. Sec. 1. The Corporation may provide a service to enable Members to process and settle stock loan rebates on a automated basis. Such automated processing of rebates shall be known as the Stock Loan Rebate Payment and Collection Service and shall be processed in accordance with the provisions of this Rule.

Sec. 2. A Member from whom a stock loan rebate payment is due (the Payer) may submit to the Corporation in such form and within such time frame as the Corporation may determine from time to time, the name of each Member to whom payments are due and the amount of rebate due to each such Member (the Payee). If such stock loan rebate data does not contain complete information, the Corporation will reject the data and will advise the Payer of such rejection in such form and by such time as established by the Corporation from time to time. The Corporation shall not be responsible for the completeness or accuracy of any data submitted by a Payer.

Sec. 3. At any time, the Corporation may prohibit a stock loan rebate payment from being processed in the Stock Loan Rebate Payment and Collection Service if the Corporation, in its discretion, determines that such action is necessary for the protection of the Corporation, Settling Members, creditors or debtors.

Sec. 4. On the basis of the data submitted to the Corporation, the Corporation shall produce a report in such form and by such time as determined by the Corporation from time to time, indicating the amount each Member shall be debited or credited, as the

case may be. Each Member must compare this report against his records. Any discrepancies between the two must be immediately reported by the Member to the Corporation. To the extent necessary or appropriate, the Corporation will cause an adjustment to be made to such report within such time as the Corporation determines to be necessary.

Sec. 5. On such day, as determined by the Corporation from time to time, the Corporation shall debit and credit the respective Payer's and Payee's settlement account with the appropriate rebate amounts and such amounts shall be included on the Member's settlement statement.

Sec. 6. Settlement of money payments between Members arising from stock loan rebates covered by this Rule shall be made in accordance with Rule 12 and other provisions of these Rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Stock Loan rebates are an integral and highly negotiable aspect of the stock lending process. At present, the billing, payment and reconcilement of stock loan rebates is a manually intensive process that has become an unwieldy administrative burden for Members. To relieve this burden, the Securities Lending Division of the Securities Industry Association and a number of Members requested NSCC to develop a central, automated mechanism for the payment and collection of rebates arising from stock loan activity between Members. Accordingly, to accommpdate this request, NSCC has developed the Stock Loan Rebate Payment and Collection Service.

The purpose of the proposed rule change is to establish NSCC's authority to provide and the procedures for the Stock Loan Rebates Service.

Pursuant to the terms of the Service, a Member from whom a stock loan rebate is due may submit the name of a Member to whom a rebate is due and the amount of the rebate. On the basis of the data submitted, NSCC will produce a report indicating the amount a Member shall be debited or credited, as the case may be. On settlement day, NSCC will debit or credit the appropriate Member's settlement account.

NSCC's Statement of Policy, Addendum D, addresses NSCC's rights with respect to reversing payments which are not guaranteed. Since the proposed rule does not provide for the guarantee of payments processed through the System, this Statement of Policy is applicable.

Since the proposed rule change establishes a service that will enable Members to facilitate the prompt and accurate payment and collection of stock loan rebates, the proposed rule change is consistent with the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Comments on the Burden on Competition

NSCC does not perceive that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organizations Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments on the proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 31, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 2, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-15579 Filed 7-9-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 2, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Home Shopping Network, Inc.

Common Stock, $.01 Par Value (File No. 7-9047)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 24, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments shold file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-15580 Filed 7-9-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0005]

Application for Transfer of Control of a Licensed Small Business Investment Co.; The Franklin Corp.

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.601 of the SBA Regulations governing small business investment companies (13 CFR 107.601 (1986), for transfer of control of The Franklin Corporation (Franklin), 1185 Avenue of the Americas, New York, New York 10036, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 et seq.).

Franklin, a New York Corporation, was licensed by SBA on September 17, 1959. The Company is registered with the Securities and Exchange Commission under the Investment Company Act of 1940.

The Estate of Herman E. Goodman (the Estate), the Adam J. Goodman Charitable Remainder Unitrust (the Trust) and the Herman E. and Estelle Goodman Foundation (the Foundation), collectively, own 387,898 shares or 38.64 percent of the outstanding voting securities of Franklin and are referred to hereafter as the Selling Stockholders. The address of the Estate, the Trust and the Foundation is c/o George DeSipio, Esq.; Clearly, Gottlieb, Steen & Hamilton; One State Street Plaza; New York, New York 10004.

The acquiring entities are ETL Services, Inc. (ETL-S) (direct purchaser); ETL Holding Corp (ETL-H) (holding company for 100 percent of the common stock of ETL-S and indirect purchaser); and S.L. Brown and Company (B&C) (91.46 percent owner of ETL-H and indirect and direct purchaser). Mr. Stephen Brown acts as Chairman of the Board of ETL-S and ETL-H and is a General Partner of B&C.

B&C purchased an aggregate of 5,000 shares of Franklin in the over-the-counter market on April 21, 1986 and April 28, 1986. ETL-S entered into a Stock Purchase Agreement (the Agreement) dated May 22, 1986, as amended, with the Selling Stockholders which provides for the purchase by ETL-S from the Selling Stockholders of an aggregate of 387,898 shares, which number may be varied to any number of shares between 387,000 and 388,144 for a purchase price of between $6,385,500 and $6,404,376.

A condition of ETL-S's obligation to purchase the shares is that the designees of ETL-S shall constitute a majority of the Board of Directors of Franklin whose officers, directors and 5 percent or more shareholders, subsequent to the consummation of the purchase, would be as follows:

Name and business address	Proposed relationship
Stephen L. Brown, S.L. Brown & Company, 767 Fifth Avenue, New York, NY 10153.	Director, Chairman of the Board.
Alan L. Farkas, The Franklin Corporation, 1185 Avenue of the Americas, New York, NY 10036.	President, Treasurer and Director.
Elliot Gorman, The Franklin Corporation 1185 Avenue of the Americas, New York, NY 10036.	Controller and Assistant Secretary.
James S. Eisberg, The Franklin Corporation 1185 Avenue of the Americas, New York, NY 10036.	General Counsel and Secretary.
Milton H. Dresner, Highland Construction Company, 18620 West Ten Mile Road, Southfield, Michigan 48037.	Director.
Carl D. Glickman, The Leader Building, Room 1140, Cleveland, Ohio 44114.	Director, Chairman of the Executive Comm.
Jay B. Langer, Hudson General Corporation, 111 Great Neck Road, P.O. Box 355, Great Neck, NY 11022.	Director.
Carl Spielvogel, Backer & Spielvogel, Inc., 11 West 42nd Street, New York, NY 10036.	Director.
Jeffrey J. Steiner, Concord Investments, 900 Third Avenue, New York, NY 10022.	Director.
ETL Services, Inc., 1100 Ridge Pike, Conshohocken, PA 19428.	38.6 percent direct ownership.
ETL Holding Corp. c/o S. L. Brown & Company, 767 Fifth Avenue, New York, NY 10153.	38.6 percent indirect ownership.
S.L. Brown & Company, 767 Fifth Avenue, New York, NY 10153.	35.3 percent indirect ownership, .5 percent direct ownership.

ETL-S's designated board members are Messrs Brown, Glickman, Dresner, Langer and Steiner thereby affording ETL-S's majority representation on the Board of Directors.

Franklin will continue operations at its current address with no change in the Company's business or corporate structure or investment policy or area of operations.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new owners, and the probability of successful operations of the Company under this ownership, including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is given that any person may, not later than 90 days from the date of publication of this Notice, submit written comments on the proposed tranfer of ownership and control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Steet NW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of genreal circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 30, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-15504 Filed 7-9-86; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0237]

Issuance of a Small Business Investment Company License; Leader Capital Corp.

On March 12, 1986, a notice was published in the **Federal Register** (51 FR 8611) stating that an application has been filed by Leader Capital Corporation, with the Small Business Administration (SBA) pursuant to 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1986)) for a license as a small business investment company.

Interested parties were given until close of business on April 11, 1986, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04-0237 on June 23, 1986, to Leader Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 30, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-15505 Filed 7-9-86; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 04/04-5236]

Application for License To Operate as a Small Business Investment Co.; Renaissance Capital Corp.

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies

(13 CFR 107.102 (1986)) for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*) and the Rules and Regulations promulgated thereunder.

Applicant: Renaissance Capital Corporation

Address: 230 Peachtree Street, Atlanta, Georgia 30303.

The proposed officers, directors and anticipated shareholders of the Applicant are as follows:

Name	Position	Percent of ownership
Thomas O. Cordy, 3770 Village Drive, Atlanta, GA 30331.	Chairman of the Board & Director.	None.
Ernest R. Murphy, 495 Holderness Street SW., Atlanta, GA 30310.	President and Treasurer.	Do.
Walter R. Huntley, Jr., 1620 S. Gordon Street, Atlanta, GA 30310.	Director	Do.
Tarby C. Bryant, Jr., 4030 Paper Mill Road, Marietta, Georgia 30067.	do	Do.
Dr. Edward D. Irons, 58 Monet Court NE., Atlanta, GA 30377.	do	Do.
Carl Ware, 1596 Willis Mill Rd., Atlanta, GA 30311.	do	Do.
James K. Davis, 3389 Bobolink Circle SW., Atlanta, GA 30311.	do	Do.
William A. Clement, 428 Page Avenue NE., Atlanta, GA 30307.	President of Investment Advisor.	Do.
Dobbs Ram & Company, 401 West Peachtree NE., Atlanta, GA 30308.	Investment Advisor.	Do.
Atlanta Economic Development Corporation, 1350 North Omni International, Atlanta, GA 30303.		20.0
Coca Cola Company, 310 North Avenue, Atlanta, GA 30308.		10.0

The remainder of the applicant's stock will be held by approximately 37 companies. None of these companies will own in excess of 5 percent.

The Applicant, a Georgia corporation, will begin operations with $1,000,000 in private capital and conduct its activities principally in the State of Georgia. As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management, including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Atlanta, Georgia area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 1, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-15506 Filed 7-9-86; 8:45 am]

BILLING CODE 8025-01-M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 21 days of this publication in the **Federal Register.** If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer, and the Agency Clearance Officer before the deadline.

Copies: Copies of forms, request for clearance (S.F. 83s), supporting statements, instructions, and other documents submitted to OMB for review may be obtained from Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

AGENCY CLEARANCE OFFICER: Richard Vizachero, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538

OMB REVIEWER: Patricia Aronsson, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7231

Title: Contract Requirements

Frequency: On occasion

Description of Respondents: The collection of the information is necessary in order for SBA to award and administer contracts for the Government. Vendors interested in obtaining Government contracts are affected

Annual Responses: 2,000

Annual Burden Hours: 100,000

Type of Request: Extension

Title: Candidate's Self Assessment

Form No. SBA 1238A

Frequency: On occasion

Description of Respondents: This form is requested from applicants for positions in SBA to assist in evaluating the candidate's abilities and experience relative to specific aspects of a vacancy

Annual Responses: 3,000

Annual Burden Hours: 1,500

Type of Request: Extension

Title: Supervisory Assessment of Traits Relative to Promotion/Placement

Form No. SBA 1238

Frequency: On occasion

Description of Respondents: This form is requested from supervisors of applicants for positions in SBA to assist in evaluating abilities and potential relative to specific aspects of a vacancy.

Annual Responses: 3,000

Annual Burden Hours: 1,500

Type of Request: Extension

Dated: July 3, 1986.

Richard Vizachero,

Chief, Administrative Procedures and Documentation Section, Small Business Administration.

[FR Doc. 86-15572 Filed 7-9-86; 8:45 am]

BILLING CODE 8025-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Possible Negotiation of a U.S.-Canada Free Trade Area

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of United States-Canada trade negotiations, of articles which may be affected by such negotiations, and of public hearings relating to such negotiations.

SUMMARY: In conformity with section 131 of the Trade Act of 1974, Pub. L. 93-618 (Trade Act), this publication gives notice of the United States' intention to

participate in trade agreement negotiations with Canada, and designates those articles which, provided they are of Canadian origin, will be considered in such negotiations for modification or continuance of United States duties under the authority of section 102 of the Trade Act. In conformity with section 133 of the Trade Act, this publication also gives notice that the Trade Policy Staff Committee (TPSC) will conduct public hearings on consideration of the possible establishment of a U.S.-Canada Free Trade Area (FTA).

Additional Information: Requests for additional information regarding establishment of a U.S.-Canada free trade area should be directed to William S. Merkin, Room 501, 600 17th Street, NW., Washington, DC 20506; telephone (202) 395–5663.

1. Background

On March 18, 1985, President Reagan and Canadian Prime Minister Mulroney agreed to explore possibilities for bilateral negotiations on a U.S.-Canada free trade area. On September 26, 1985, Prime Minister Mulroney communicated to President Reagan a formal request for negotiations towards a trade agreement involving the broadest possible package of mutually beneficial reductions in barriers to trade in goods and services. On December 10, 1985, pursuant to section 102(b)(4)(A) of the Trade Act of 1974, President Reagan provided written notice to the Senate Finance Committee and the House Ways and Means Committee, of his intent to enter into negotiations towards an FTA with Canada.

2. Lists of Articles Which May be Considered in Trade Negotiations

Every article provided for in the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) will be considered for the elimination or reduction of duties under the authority of section 102(b)(4)(A) of the Trade Act, provided such articles are of Canadian origin.

3. Advice From the U.S. International Trade Commission

In connection with these negotiations, the U.S. Trade Representative (USTR) is requesting the U.S. International Trade Commission (USITC) to conduct an investigation, pursuant to section 131(b) of the Trade Act of 1974, and provide advice within six months, with respect to each item listed in the Tariff Schedules of the United States, as to the probable economic effect of providing duty free treatment for imports from Canada on industries in the United States producing like or directly competitive articles and on consumers.

Pursuant to section 131(c) of the Act, the USTR is requesting USITC advice as to the probable economic effects on domestic industries and purchases and on prices and quantities of articles in the United States if the U.S. nontariff measures listed in Annex I to this notice were not applied to imports from Canada.

Pursuant to section 332(g) of the Tariff Act of 1930, the USTR is requesting the Commission's assessment of the degree to which U.S. exports to Canada may be expected to increase and U.S. industries to otherwise benefit if imports into Canada of all products of the United States were free of duty and not subject to the Canadian nontariff measures listed in Annex II.

4. Public Comments and Testimony

In conformity with section 133 of the Trade Act and with the regulations of the Trade Policy Staff Committee (TPSC), 15 CFR 2003, the Chairman of the TPSC invites the written comments and/or oral testimony of interested parties in public hearings on the desireability, the scope, and the economic effects of a U.S.-Canada FTA.

Comments are particularly invited on:

(a) Economic costs and benefits to U.S. producers and consumers of removal of all tariff barriers to U.S.-Canada trade and, in the case of articles for which immediate elimination of tariffs is not appropriate, the appropriate staging schedule for such elimination.

(b) Economic costs and benefits to U.S. producers and consumers of removal of non-tariff barriers listed in Annexes I and II.

(c) Whether there are additional non-tariff barriers not listed in Annexes I and II, and economic costs and benefits of removal of such barriers.

(d) Proposed and potential service sectors to be included in U.S.-Canada free trade arrangements, existing barriers to trade in these service sectors, and economic costs and benefits of removing such barriers.

(e) Existing restrictions on direct investment in the U.S. and Canada and the costs and benefits to both sides of eliminating such restrictions.

(f) Adequacy of existing customs measures to ensure Canadian origin of imported goods, and the appropriate rule of origin for good entering under the FTA.

Comments identifying state, provincial, or federal regulations, which are not primarily trade-related, as present or potential barriers to trade should consider the economic, political and social objectives of such regulations and the degree to which they discriminate against producers or investors of the other country.

5. Requests to Participate in Public Hearings

Hearings will be held on September 8 and 9, 1986, beginning at 10:00 a.m. in GSA Auditorium, 18th & F Streets; NW., Washington, DC and will continue on September 10 if required. Parties wishing to testify orally at the hearings must provide written notification of their intention by noon, August 18, 1986 to Carolyn Frank, Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 521, 600 Seventeenth Street, NW., Washington, DC 20506, giving:

(1) Their names, addresses and telephone numbers; and

(2) A brief summary of their presentation, including the product(s), with TSUS numbers, to be discussed.

Those parties presenting oral testimony must submit a complete written brief, in 20 copies, by noon, August 26, 1986.

Remarks at the hearings should be limited to no more than ten minutes to allow for possible questions from the Chairman and the interagency panel. Participants should provide twenty typed copies of their oral presentation at the time of the hearings.

Parties are referred to TPSC regulations at 15 C.F.R. 2003 for the Committee's rules concerning oral testimony, the submission of written briefs, the treatment of business confidential information and other procedures related to TPSC hearings.

6. Written Comments

Written comments should be sumitted in twenty copies no later than September 15, 1986, in conformity with TPSC regulations for written submissions, 15 CFR 2003.2, and addressed to Carolyn Frank, Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 521, 600 Seventeenth Street, NW., Washington, DC 20506. Comments should state clearly the position taken and should describe with particularity the evidence supporting that position.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

Annex I—United States Non-Tariff Barriers Affecting Trade in Goods

General

The Buy American Act, along with related executive orders, assigns preferential rates within the range of 6–12 percent in favor of U.S. suppliers for procurement by Federal

government agencies not covered by the GATT Government Procurement Code.

Canadian firms cannot bid on U.S. government purchases which are set aside for small businesses.

Purchases made by some U.S. state and local governments are restricted by their own "Buy-local" and/or "Buy American" requirements.

Procurement made as a result of federally funded grant programs may be subject to buy-American preference or other discrimination against foreign suppliers.

Legislation enacted in 1984 prohibits the General Services Administraion, which is covered by the Government Procurement Code, from buying materials for the U.S. stockpile which are not mined or refined in the United States.

Agricultural Products

Section 22 of the Agricultural Adjustment Act of 1933 provides Presidential authority to place quotas or fees on imports which materially interfere with any price support or stabilization program undertaken by the U.S. Department of Agriculture. Price support programs are currently in effect for wheat, corn, oats, sorghum, sugar, peanuts, soybeans, milk, cotton, honey, tobacco, wool and mohair, and rice. Section 22 quotas currently are applied on cotton, peanuts, sugar blends and mixtures, sugar-containing products, and dairy imports; import fees are applied to refined sugar. Canadian commodities currently affected by section 22 actions include refined sugar, sugar blends and mixtures, sugar-containing products, and dairy products.

The Food, Drug, and Cosmetic Act (FDCA) requires that all imported food products comply with standards of quality established under the Act. The FDCA prohibits movement in interstate commerce of adulterated and misbranded foods, drugs and cosmetics. Food additives and colors must be approved by the Food and Drug Administration.

The U.S. Meat Import Act of 1979 provides for the imposition of quantitative import controls on certain fresh, chilled and frozen beef, veal, mutton and goat meat products, as well as other preserved beef and veal products, if imports are expected to exceed 110% of a base quantity, which is adjusted annually by the Secretary of Agriculture based on U.S. production levels and projections, and modified by a countercyclical factor. However, imports cannot be restricted by the President to less than 1,250 million pounds in any given year. The trigger level for 1986 is 1,340 million pounds.

Restrictive quotas on imported raw sugar are in effect under the authority of headnote 2 of subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States, which permits the President to impose quotas and duties on sugar with due consideration to the interests of domestic producers and U.S. trading partners. Import quotas are allocated by country in proportion to historic trade in accordance with GATT rules. Canada's share of the quotas, which is announced September 1 for the fiscal year, is 1.1 percent.

Section 8(e) of the Agricultural Marketing Agreement Act of 1937 provides that specified imported agricultural products must meet the same minimum quality/grade requirements that are imposed on domestic produce when a federal marketing order is in effect.

Federal Marketing orders are established by the Secretary of Agriculture after petition and approval by a majority of the producers and handlers of the community in a designated region. Specific requirements under an order and the decision to apply the provision of an order in any particular marketing season are made by the Secretary of Agriculture, based on recommendations by committees composed of grower and handler representatives. Federal marketing orders are currently in effect for avocadoes, dates, grapefruit, potatoes, olives, onions, oranges, limes, prunes, raisins, tomatoes, walnuts and filberts.

Alcoholic Beverages

State controls on alcoholic beverages.

Automotive Parts

Canadian original equipment automotive components must be "dedicated" for such use at the time of importation in order to qualify for duty-free treatment under the Automotive Products Trade Act (APTA). Canadian made motor vehicles components imported by new vehicle producers in the United States are not permitted duty-free entry by U.S. Customs officials unless a specific item in the Tariff Schedules of the United States has been established for "Canadian articles which are original motor-vehicle equipment" for that category of product. Canada does not impose a similar requirement on Canadian imports which may receive duty-free treatment under the U.S./Canadian Automotive Agreement.

Aircraft and Aircraft Engines

U.S. producers of civil aircraft and aircraft engines are effectively subsidized through their access to technology developed in programs funded by the U.S. Defense Department and the National Aeronautics and Space Administration.

Electrical Equipment

Legislation enacted in October, 1985, assigns a "Buy American" preferential rate of 25 percent in favor of U.S. suppliers of three types of heavy electric equipment purchased by the Tennessee Valley Authority and the Power Marketing Administration, which are not covered by the Government Procurement Code.

Fish

The Nicholson Act, 46 U.S.C. 251, prohibits foreign fishing vessels from directly landing their catch in U.S. ports.

Food and Drug Administration rules prohibit imports of Canadian swordfish, on the grounds that mercury levels are excessive. The Government of Canada contends that U.S. levels are set too low, and that regulations are not enforced against U.S. fishermen shipping interstate.

The Magnuson Fishery Conservation and Management Act authorizes embargoes of fish imports in certain circumstances, usually when a U.S. vessel is seized as a result of a disputed foreign maritime jurisdiction claim. The Act also gives the President authority to embargo fish imports from countries not complying with internationally agreed conservation programs.

Seal and Other Marine Mammal Products

The Marine Mammal Protection Act prohibits almost all commerce in seal, whale, and other marine mammal products. Alaskan natives, however, are exempted for "cottage industry" handicrafts, but imports from similar Canadian cottage industries are prohibited.

Ships and Vessels

The Merchant Marine Act of 1920, section 27, requires that all coastal, intercoastal, and noncontiguous domestic trade be carried out by U.S. built vessels under U.S. registry.

The Capital Construction Fund, authorized by section 607 of the Merchant Marine Act of 1936, as amended, allows for deferral of Federal income taxes on certain deposits of money or other property if these funds are used to construct vessels in U.S. shipyards. The Construction Reserve Fund Program allows deferral of Federal taxes on capital gains on the sale or other disposition of a vessel, provided the net proceeds be placed in the fund and invested in a new U.S. built vessel within three years.

Under the Operating Differential Subsidy (ODS), ships must be U.S. built to qualify for operating subsidies.

The Federal Ship Financing Program provides loan guarantees to U.S. shipowners for the construction of various types of vessels, including passenger and cargo ships, dredges, drydocks and other ship-types used in research. Vessels built with these guarantees are subject to "Buy America" requirements of the Surface Transportation Assistance Act.

Cargo preference laws give indirect assistance to the U.S. shipbuilding industry because U.S. flagships must normally be constructed in the United States. The Military Transportation Act of 1904 requires that all items procured or owned by the U.S. Armed Forces must be carried on U.S. flag vessels. Public Resolution 17 of the 73rd Congress requires that 100 percent of cargo generated by loans made by the U.S. government must be shipped on U.S. flag vessels. However, Public Resoluton 17 also provides for a waiver of 50 percent of that cargo to vessels of the recipient countries choice, (usually, but not always, its own vessels). The Cargo Preference Act (Public Law 83–664) requires that at least one half of all U.S. Government-generated cargo be transported on privately owned U.S. flag commercial ships.

A 1965 amendment to the Military Appropriations Bill requires all major components of the hull and superstructure of navy vessels to be constructed in U.S. shipyards. A 1968 amendment prohibits construction of naval vessels in foreign yards.

Specialty Steel

U.S. imports from all sources are subject to absolute quotas.

Urban Transit Rolling Stock, Cement, and Steel

The Surface Transportation Assistance Act requires state and local governments to

establish a 10 percent preference margin for U.S. goods in the purchase of rolling stock and cement, and a 25 percent preference in the purchase of steel and "other manufactured products." (The margin is currently applied only to steel, however.)

Annex II—Canadian Non-Tariff Barriers Affecting Trade in Goods

General

Canada's Federal "buy national" policy discriminates against foreign suppliers in areas not covered by the Government Procurement Code. Canada's telecommunications and transportation agencies and utilities generally follow strict "buy national" policies. Products affected include telecommunications, heavy electrical, and transportation equipment, and computer products.

Provincial government "buy local" practices are implemented through procurement, content and origin regulations. Portland cement is a common example of products affected by such regulations.

There are various standards requirements for industrial goods and numerous product certification difficulties. For example, Underwriters Laboratory of Canada (ULC) does not accept test data on compliance with these standards from U.S. Underwriters Laboratory.

Canadian offset requirements for large government purchases which impede or distort trade, particularly in the area of defense purchases.

Alcoholic Beverages

Retail sales of alcoholic beverages in Canada are conducted almost exclusively through provincial liquor boards or marketing agencies, whose practices discriminate against foreign beverages. The discriminatory practices include the denial of full access to the distribution system, local content requirements, an provincial listing and delisting policies in which the provincial liquor boards either refuse to "list" (stock/carry) foreign products, or in cases where foreign products are listed, the boards use discriminatory markups to discourage their purchase.

Fishing

Canadian regulations require imports of herring into Canada be shipped only in boxes having a capacity of 200 pounds.

Canada prohibits exportation of unprocessed salmon and herring.

Certain species of fish cannot be landed in Canadian ports by foreign vessels.

Footwear

In 1977, Canada placed quotas on imports of leather, noncanvas, waterproof plastic, and waterproof rubber footwear. With the exception of women's and girls' footwear, the quotas were allowed to expire in November 1985. Existing quotas on women's and girls' footwear will be phased out over three years.

Dairy Products

Canada has supply management programs which effectively limit the importation of dairy products. In order to import dairy products (except cheese, which is under quota) an import license must be approved by the Canadian Dairy Commission.

Grain and Feeds

The Canadian Wheat Board controls imports of wheat and grain products through the issuance of import licenses; recently the licensing authority for imported feed barley and oats was transferred from the Board to the Ministry of External Affairs. The import licensing regulations have kept imports of U.S. wheat, barley, oats, and products thereof at a minimum. Any imported item (except those already packaged for retail marketing) that has at least a 25 percent grain content is subject to a licensing requirement, and licenses are denied grain content is subject to a licensing requirement, and licenses are denied for any commodity or product that is readily available from Canadian sources.

Hogs

Canadian health regulations requiring that hogs imported for slaughter must be quarantined for 30 days in order to be certified free of pseudorabies make U.S. hog exports uneconomical.

Horticultural Products

The Canada Agricultural Products Standards Act (CAPS) authorizes the federal government to restrict on the basis of standards, preparation, packaging and labeling the import or interprovincial movement of any agricultural product. In general, products for which a grade has been established are required to be graded, inspected, packed and labeled according to the grade specifications in order to move in interprovincial or export trade. There are some exceptions, however, including bulk shipments. Through the CAPS, Canada limits imports (and interprovincial trade) of bulk items. The most affected U.S. export items are potatoes and apples, which cannot be shipped to Canada in bulk for packaging if supplies exist in the province of destination.

In October 1979, Agriculture Canada announced a new fast tract Import Surtax System for horticultural products. This safeguard procedure involves monitoring FOB prices in major U.S. wholesale markets of 10 specifically named horticultural commodities, and other horticultural products on request. When these prices fall below 85 percent of the average price for the last 3 years, or 90 percent of the average for the last 5 years, the Government of Canada may impose a surtax sufficient to raise the import price to the benchmark level, thereby restricting imports.

Section 2 of the Canadian Fruit, Vegetables and Honey Regulations forbids, with certain limited exceptions, the "entry of fresh fruit or vegetables of kinds grown in Canada unless such entry is accompanied by conclusive evidence that the importer purchased such goods no later than 24 hours, excluding Sundays and legal holidays, after time of shipment from the point of production." This provision prohibits the marketing in Canada of U.S. produce from shipments which do not have a pre-arranged destination (sales referred to in the trade as "Rollers") or of U.S. produce sold on a consignment basis. Canadian produce marketed within Canada does not have to meet similar requirements.

Meat

Canada's meat import law allows for the limitation of meat imports under certain circumstances.

Canadian meat inspection regulations requiring certain retail cuts of processed meats (such as bacon) to comply to a specific metric package size (in the case of bacon 500 grams) makes it more expensive to market U.S. retail cuts since U.S. production lines are not geared to meet specific metric sizes.

Motion Pictures and Television and Radio Programming

Canada does not protect domestic or foreign producers of motion pictures and other television programming against unauthorized simultaneous transmission by cable systems of broadcast signals containing their works. Canadian Government policy is to offer TV programming in remote areas equal to that near the U.S.-Canadian border. This deprives U.S. copyright owners of compensation or control over a significant form of commercial exploitation in Canada.

Unauthorized use of U.S. satellite signals, signal piracy and video cassette piracy.

Canadian regulations specify that 60% of the content of Canadian television programs must be of Canadian origin with the remaining 40% to be apportioned so that no one foreign country receives more than 30%.

Screentime quotas restrict the use of commercials produced outside Canada. Regulations require that 80% of television commercials aired in Canada must be domestically produced.

Television commercials may be imported into Canada only if they meet all clearance requirements by the Government of Canada and the networks.

Quebec dubbing requirements for films produced outside Quebec.

Legislation is in place in the province of Quebec that imposes quantitative restrictions on showing films, foreign ownership restrictions, restrictions on earnings, discriminatory taxation, and limitations on rental terms and royalties. However, implementing regulations have not yet been issued.

Motor Vehicles, Used

The Government of Canada prohibits the importation for sale of used motor vehicles manufactured prior to the calendar year of importation into Canada.

Pesticides

U.S. agricultural exports may be denied entry into Canada if pesticides not registered for use in Canada have been used in their production.

Pharmaceuticals

The Government of Canada requires compulsory licensing for pharmaceutical patents.

Plywood

The Canadian Standards Association (CSA) plywood standards cover only woods indigenous to Canada, excluding major U.S. plywood species. This denies entry of most U.S. residential construction plywood. Also,

D-Grade veneers are not recognized under CSA plywood standards.

Poultry and Eggs

The importation of turkeys, chickens and eggs is limited by quotas.

Publications

To encourage advertising in Canadian publications, Canada bars entry of foreign publications in which more than 5 percent of advertising space indicates specific sources of availability for goods and services in Canada.

Canada denies tax reductions to Canadian firms for the cost of advertising in foreign media when the advertising is directed primarily at Canadian citizens.

The Canadian Post Corporation (CFC) applies higher second class postal rates to foreign publications mailed in Canada than to Canadian publications. The highest rate is applied to publications drafted, edited, and printed abroad. A middle rate is applied to publications drafted and edited abroad but printed in Canada. The lowest rate is applied to publications drafted, edited, and printed in Canada.

Structural Steel, fabricated

Provincial governments prohibit use of imported materials in major construction projects in which the provincial government has an equity interest.

Telecommunications

Difficult product certification requirements slow the entry of foreign equipment such as PBX's, computers, and telephones, into Canada. Government procurement policies and practices discriminate against foreign suppliers.

[FR Doc. 86-15548 Filed 7-9-86; 8:45 am]

BILLING CODE 3190-01-M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980 Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms under review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524, FTS 858-2524.

Type of Request: Renewal of a previously approved information collection

Title of Information Collection: Prevailing Wage Survey for TVA regular operating and maintenance work

Frequency of Use: Annually

Type of Affected Public: State or local governments, businesses or other for-profit, Federal agencies or employees

Small Businesses or Organizations Affected: No

Federal Budget Functional Category Code: 999

Estimated Number of Annual Responses: 60

Estimated Total Annual Burden Hours: 60.

Need For and Use of Information: TVA surveys industrial firms whose employees perform work similar to that performed by TVA's operating and maintenance employees. The data collected is used in negotiations to determine prevailing rates of pay and benefits in the vicinity as required by the TVA Act.

Dated: July 1, 1986.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 86-15526 Filed 7-9-86; 8:45 am]

BILLING CODE 8120-01-M

Paperwork Reduction Act of 1980, Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms under review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524, FTS 858-2524.

Type of Request: Renewal of a previously approved information collection

Title of Information Collection: TVA Trades and Labor Wage Survey for Construction of Major Projects

Frequency of Use: Annually

Type of Affected Public: Businesses or other for-profit

Small Businesses or Organization Affected: No

Federal Budget Functional Category Code: 999

Estimated Number of Annual Responses: 20

Estimated Total Annual Burden Hours: 20.

Need For and Use of Information: TVA surveys major construction projects in the vicinity as required by the TVA Act to collect prevailing wage and benefit data for use in negotiations to set pay rates for TVA employees performing construction work.

Dated: July 1, 1986.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 86-15527 Filed 7-9-86; 8:45 am]

BILLING CODE 8120-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Jill Cottine, Agency Clearance

Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: July 3, 1986.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Medicine and Surgery
2. Dental Record, Authorization and Invoice for Outpatient Services
3. VA Form 10–2570d
4. Non-recurring
5. Individuals or households; Federal agencies or employees; Small businesses or organizations
6. 45,500 responses
7. 15,167 hours
8. Not applicable.

[FR Doc. 86–15561 Filed 7–9–86; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Amendment of System Notice

Notice is hereby given that the Veterans Administration is considering adding a new category of records to the system of VA records entitled "Compensation, Pension, Education and Rehabilitation Records—VA" (58 VA 21/22/28) as set forth on page 738 of the **Federal Register** publication, Privacy Act Issuances, 1984 Comp., Volume V, and amended at 50 FR 26875 (June 28, 1985) and at 50 FR 31453 (August 2, 1985). The Veterans Administration, under the authority of 38 U.S.C. 210(b)(1) for management purposes exclusively, plans to maintain an automated report created as a by-product of computer processing of claims-related activities to include the number and kind of actions finalized by each employee. The report also includes information on numbers of actions returned for change by reviewers and on numbers of computer system rejected transactions. An individual employee is identified by the employee Target Access Card (TAC) number. This information will be maintained in the automated system during the month in which the action is taken. At the end of each month a paper report will be generated for each regional office originating the monthly transactions. This automated report will replace the manual verification of end products currently performed by the supervisors.

In order to maintain this record of individual employee productivity, changes have been made to the system notice to fully describe the records to be maintained and the policies and practices for storing, retrieving, accessing, retaining, and disposing of these records.

The VA has determined that maintaining employee production records is necessary for the improved management of the Agency.

A "Report of Intention to Publish a Federal Register Notice of a New System of Records" and an advance copy of the amended system notice have been provided to the Speaker of the House, the President of the Senate, and the Director, Office of Management and Budget (OMB), as required by the provisions of 5 U.S.C. 552a(o) and the Privacy Act Guidelines issued by OMB on October 3, 1975 (40 FR 45877).

These changes are administrative in nature; therefore no public comment is required.

Dated: June 27, 1986.

Thomas K. Turnage,

Administrator.

Notice of Amendment of System of Records

In the system identified as 58VA21/22/28, "Compensation, Pension, Education and Rehabilitation Records—VA" as set forth on page 738 of the **Federal Register** publication Privacy Act Issuances, 1984 Comp., Volume V, and amended at 50 FR 26875 (June 28, 1985) and at 50 FR 31453 (August 2, 1985), the following amendments are made:

58VA21/22/28

System Name:

Compensation, Pension, Education and Rehabilitation Records—VA

System Location:

Records are maintained at the VA regional offices, the VA Records Processing Center, St. Louis, Missouri and the Data Processing Center at Hines, Illinois, with subsidiary accounts receivable records located at the Data Processing Center at St. Paul, Minnesota. Active records are generally maintained by the regional office having jurisdiction over the domicile of the claimant. Address locations are listed in VA Appendix 1 at the end of this document. The automated individual employee productivity records are temporarily maintained at the VA data processing facility serving the office in which the employee is located. The paper record is maintained at the VA regional office having jurisdiction over the employee who processed the claim.

Categories of Individuals Covered by the System:

* * * * *

16. Any VA employee who generates or finalizes adjudicative actions using the TARGET computer processing system.

Categories of Records in the System:

* * * * *

The VA employee's Target Access Card number, the number and kind of actions generated and/or finalized by each such employee, the compilation of cases returned for each employee.

Authority for Maintenance of the System:

Title 38, United States Code, section 210(b), 210(c) and chapters 11, 13, 15, 31, 34, 35, and 36.

* * * * *

Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System:

Storage:

Records (or information contained in records) are maintained on paper documents in claims file folders, educational file folders and vocational rehabilitation file folders and on automated storage media (e.g. microfilm, microfiche, magnetic tape and magnetic disks). Critical eligibility information regarding VA benefits is maintained on various automated storage media. Such information may be accessed through a data telecommunications terminal system. Target terminal locations include VA Central Office, regional offices, and on a pilot basis some VA medical health care facilities. Information relating to receivable accounts owed to the VA, denominated the Centralized Accounts Receivable System (CARS), is maintained on magnetic tape and microfiche and microfilm. CARS is accessed through a data telecommunications terminal system at St. Paul, Minnesota. This report containing the number and kind of actions finalized by each employee will be separately maintained on a paper listing under the overall control of each station Director. The automated and paper records will be retained for two years.

Retrievability:

Claims file folders are indexed by name of veteran and VA file number.

Automated records are indexed by name, VA file number, payee name and type of benefit. Automated records of employee productivity cannot be accessed. At the conclusion of a monthly reporting period, the generated listing is indexed by employee TAC number.

Safeguards:

1. Physical Security:

* * * * *

(d) Employee production records are identified by the confidential Target Access Card number, not name, and are protected by management/supervisory personnel from unauthorized disclosure in the same manner as other confidential records maintained by supervisors.

* * * * *

Retention and Disposal:

Individual claims file folders and the compensation, pension, rehabilitation and education claims records contained therein are retained at the servicing regional office for the life of the veteran. At the death of the veteran, these records are sent to the Federal Records Center (FRC), maintained by the FRC for 75 years and thereafter destroyed. Rehabilitation and education counseling records are maintained until the exhaustion of a veteran's maximum entitlement or upon the exceeding of a veteran's delimiting date of eligibility (generally ten or twelve years from discharge or release from active duty), whichever occurs first, and then destroyed. Automated storage media containing temporary working information are retained until a claim is processed to determination. All other automated storage media is retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States. Employee productivity records are maintained for two years after which they are destroyed by shredding or burning.

Notification Procedure:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such records, should submit a written request or apply in person to the nearest VA regional office or center. Address locations are listed in VA Appendix 1 at the end of this document. VA employees wishing to inquire whether the system of records contains employee productivity information about themselves should contact their supervisor at the regional office of employment.

* * * * *

[FR Doc. 86-15562 Filed 7-9-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 132
Thursday, July 10, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 15, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, July 17, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Public financing of primary and general election Presidential candidates: Notice of proposed rulemaking
Review of 11 CFR 110.7 through 110.13
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86-15697 Filed 7-8-86; 3:05 pm]

BILLING CODE 6715-01-M

2

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., July 16, 1986.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Special Docket No. 1353—Application of Compania Chilena de Navegacion Interoceanica S.A. for the Benefit of the General Board Church of Nazarene, Kash, Inc., and Calco Hawaiian Mgt., Inc.—Consideration of the Record.

2. Docket No. 83-2—New Orleans Steamship Association v. Plaquemines Port, Harbor & Terminal District—Consideration of the Record.

3. Docket No. 85-20—Harrington & Company Inc., and Palmetto Shipping & Stevedoring Company, Inc. v. Georgia Ports Authority—Consideration of the Administrative Law Judge's Ruling

CONTACT PERSON FOR MORE INFORMATION: Tony P. Kominoth, Assistant Secretary, (202) 523-5725.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc 86-15685 Filed 7-8-86; 3:00 pm]

BILLING CODE 6730-01-M

Federal Register

Thursday
July 10, 1986

Part II

Merit Systems Protection Board

5 CFR Part 1201

Practice and Procedure; Final Regulation

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practice and Procedure

AGENCY: Merit Systems Protection Board.

ACTION: Final regulation.

SUMMARY: The Merit Systems Protection Board is republishing its entire rules of practice and procedure in this Part to eliminate any confusion because of improper structure or text resulting from previous piecemeal changes and temporary pilot programs. Concurrent changes are also being made and incorporated for technical accuracy, organizational improvement and/or style or language preference designed to enhance the public's and practitioners' awareness and understanding of the Board's rules of practice. The Board has completed a thorough review of the structure, style and text of its existing regulations describing practice before the Board which has, in part, evolved from published precedential interpretive decisions. The regulations published today reflect that review and are effective upon publication pursuant to 5 U.S.C. 1205(g).

EFFECTIVE DATE: July 10, 1986.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav (202) 653–8900.

SUPPLEMENTARY INFORMATION: On June 29, 1979, the Board published final regulations of practice and procedure (44 FR 38842) implementing its adjudicatory responsibilities under the Civil Service Reform Act of 1978 (Pub. L. 95–454). Subsequently, the Board published final substantive changes with respect to discovery and subpoenas (48 FR 5213); service of documents (47 FR 54419); Petitions for Review (50 FR 28895); and a pilot program for expedited process of appeals of limited application which ultimately was extended, expanded and made available generally as finally published in 50 FR 18221. The interim regulations with respect to enforcement published under Subpart E, February 26, 1986 (51 FR 6729) are modified and published here under Subpart F as final regulations. As a result of all the past revisions, the Board has determined that certain structural and technical changes should be made which require some changes in many sections of the existing Part 1201. These changes and the regulations that were not changed are published in one document for clarity and for the convenience of the public, parties and practitioners before the Board.

SUMMARY: In summary, in addition to corrections, the Board has decided to uniformly mark time from the "date of service" as identified below at (i), (k), (o), (w), (y), (ff), and (gg); give the parties more time in attorney fee cases at (o) below; provide for amicus curiae briefs ((m) below); and provide for the filing of a reply or objection where appropriate as identified below at (n), (v), (y), (z), (gg), and (hh).

Section-by-section analysis of comments and changes in Subpart E

Four agencies submitted comments on the interim rules published for comment on February 26, 1986. No organizations or individuals responded. The following constitutes a section-by-section analysis and discussion of each major change made now by the Board in Subpart E—Enforcement of Final Decision.

Subpart E is redesignated Subpart F as a result of restructuring to provide for a separate Subpart C for Petitions for Review of Initial Decisions.

Section 1201.181 Authority and explanation. No comments were received on this section and no change has been made.

Section 1201.182 Petition for enforcement.

(a) One agency suggested that appellants should not have to give reasons for filing for enforcement more than 30 days after the agency's notice that compliance is complete since there is no time limit on the Board's authority to enforce compliance. The Board agrees that there is no time limit on its authority; however, the purpose of this requirement is to encourage timely filing of such requests to assure prompt resolution of such matters for the benefit of all concerned. No change is being made.

Section 1201.183 Enforcement action by the Board.

(a) All four agencies suggested that the respondent agency should have more time to file proof of compliance. The Board agrees and has increased the time from 10 days to 15 days. The Board has otherwise clarified this paragraph as explained below.

(b)(1) All four agencies suggested that the respondent agency should have more time to file a brief. The Board agrees and has increased the time allowed from 20 days to 30 days. Also, for clarification, this requirement has been moved from paragraph (b)(1) to paragraph (a)(5). Two agencies suggested that the appellant be given an opportunity to respond to the agency's proof of compliance. The Board has adopted this suggestion and, for clarification, has moved this sentence from paragraph (b)(1) to paragraph (a)(6).

In the republished regulations changes are made as follows:

(a) The authority for Part 1201 is corrected to read 5 U.S.C. 1205. The authority for processing appeals remains 5 U.S.C. 7701 et seq.

(b) *Section 1201.2*—paragraph (c) is deleted since it is included in paragraph (a). Paragraph (d) is redesignated paragraph (c).

(c) *Section 1201.3*—paragraph (a) is expanded to identify specific types of appeals over which the Board has authority and to cite the law and/or regulation which applies. Paragraph (c) is amended to clarify the Board's jurisdiction in cases where there is a collective bargaining agreement.

(d) *Section 1201.4*—is amended to substitute regional office for field office and to clarify the geographic areas served in retirement and suitability cases. Definitions have been added for "service," "date of service," "certificate of service" and "filed.".

(e) *Section 1201.21*—is amended to require that employees be informed of the timeliness requirements and the procedures for waiver requests, and to state that giving access to the Board's regulations meets the obligations to provide copies of the regulations.

(f) *Section 1201.22*—is amended to clarify the time requirements for filing and response.

(g) *Section 1201.24*—paragraph (a) is amended to require that appellants provide their address and telephone number. The last sentence of (a)(9) is redesignated (b) for clarification; other subsections are redesignated accordingly. Paragraph (e) is added to clarify that hearings should be requested in a timely manner and to advise appellants of the consequences of failing to timely request a hearing and to appear for a scheduled hearing.

(h) *Section 1201.25*—is amended to remove duplication and for clarity.

(i) *Section 1201.26*—is amended to require the parties to serve each other and to mark time from the date of service rather than receipt date.

(j) *Section 1201.27*—is amended to clearly set out the requirements, time limits, and obligations of the parties for class action appeals.

(k) *Section 1201.31*—is amended to mark time from the date of service rather than date of receipt for consistency and because it is an identifiable date.

(l) *Section 1201.33*—is amended to make clear that Federal corporations are covered also.

(m) *Section 1201.34*—is amended by improving the definition of intervention and providing for amicus curiae involvement where intervention may not be possible or desired.

(n) *Section 1201.36*—is amended to permit the filing of objections to consolidation.

(o) *Section 1201.37*—is amended to be consistent with the law by deleting the last sentence in paragraph (a); to compute time from date of service rather than date of receipt; to provide a more realistic time for filing and response and to state the evidence necessary to establish a proper fee.

(p) *Section 1201.41*—is amended to clarify the authority of presiding officials; to provide standards for determining whether to order a hearing upon the presiding official's initiative or an agency's request and to provide a proper framework for settlement discussion.

(q) *Section 1201.43*—is amended at (b) by substituting "appeal " for "action " for technical accuracy.

(r) *Section 1201.51*—is restructured for clarity and to recognize the Board's practice of holding hearings at designated locations and to provide for exceptions by filing a motion showing good cause.

(s) *Section 1201.53*—is restructured for accuracy and clarity so that the parties will know how to obtain copies of the hearing record and of the opportunity to ask for an exception to the payment requirement.

(t) *Section 1201.55*—is amended to make it clear that a party filing a procedural motion should first determine if the other party objects, that a proposed order should accompany a motion, and that there is a time limit for filing objections to motions.

(u) *Section 1201.56*—is amended to state that the Board applies the "substantial evidence " standard to actions under 5 U.S.C. 5335; to state the appellant's burden in overpayment and retirement cases; to define "harmful error " and to clarify the order of proceeding by treating that subject in a new § 1201.57.

(v) *Section 1201.67*—is amended by adding the opportunity to file objections to the taking of official notice.

(w) *Section 1201.73*—is amended to mark time from the date of service rather than date of receipt and to eliminate as unnecessary the requirement that discovery be completed 14 days prior to the hearing.

(x) *Section 1201.92*—is amended by deleting the first sentence since it does not describe criteria for certification.

(y) *Section 1201.93*—is amended to mark the time for filing a motion from the date of the determination; to provide for the filing of objections by the opposing party and to add the sentence deleted from § 1201.92.

(z) *Section 1201.103*—is restructured for clarity and to provide an opportunity to reply to a notice of violation.

(aa) *Section 1201.111*—is amended by deleting the statement that an initial decision shall be prepared within 25 days of the closing of the record since the Boad has from time to time administratively set a greater or lesser standard depending upon workload, etc.

(bb) *Section 1201.113*—is amended to recognize the Board's determination that initial decisions are not precedential; to state that a case may be reopened on the basis of a Cross Petition for Review and that, in appropriate circumstances, the Board may dismiss a case under this section.

(cc) *Section 1201.116*—is amended to clarify that the Board may, in a single decision, grant a Petition for Review and decide the case.

(dd) *Section 1201.118*—is redesignated § 1201.119 and a new § 1201.118 is added to set forth the existing practice for processing OPM petitions for reconsideration authorized by 5 U.S.C. 7703(d).

(ee) *Section 1201.122*—is amended to more clearly state the filing and service requirements and to distinguish between initial filings and subsequent filings.

(ff) *Section 1201.125*—is amended to mark time from the date of service rather than date of receipt.

(gg) *Section 1201.129*—is amended to mark time from the date of service rather than date of receipt and to add paragraph (c) to permit replies to exceptions to the recommended decision.

(hh) *Sections 1201.131 through 1201.136*—are restructured to provide better order and to permit replies to exceptions to the recommended decision.

(ii) *Section 1201.154*—is amended to delete the requirement to file an appeal within one year from the date of the complaint because that time limit is not required by statute; to clarify what must be submitted with a request for review of a final decision under a negotiated grievance procedure; and to permit presiding officials to hold prematurely filed appeals for a short period to allow them to become timely.

(jj) *Section 1201.216*—is amended at paragraph (d) to more succinctly state this provision.

(kk) *Section 1201.221*—is amended by adding that decisions under this section are not precedential.

(ll) Throughout these regulations corrections in grammar, spelling, punctuation, and cites to other sections have been made for accuracy or preference.

(mm) Appendix I consolidates existing I and I-A.

(nn) Appendix III has been added showing approved hearing sites.

Regulatory Flexibility Act

The Acting Chairman, Merit Systems Protection Board, certifies that the Board is not required to prepare an initial or final regulatory analysis of this final regulation pursuant to section 603 or 604 of the Regulatory Flexibility Act, because of the determination that this regulation would not have significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedures, Civil rights, Government employees.

Accordingly, the Merit Systems Protection Board amends 5 CFR by revising Part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

Subpart A—Jurisdiction and Definitions

Sec.
1201.1 General.
1201.2 Original jurisdiction: Definition and application.
1201.3 Appellate jurisdiction: Definition and application.
1201.4 General definitions.

Subpart B—Hearing Procedures for Appellate Cases

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1201.11 Scope and policy.
1201.12 Revocation, amendment, or waiver of rules.
1201.13 Internal appeals of Board employees.

Petitions for Appeal of Agency Action, Pleadings

1201.21 Notice of appeal rights.
1201.22 Filing of petitions for appeal and response.
1201.23 Computation of time.
1201.24 Content of petition for appeal, right to hearing.
1201.25 Content of agency response, request for hearing.
1201.26 Number of pleadings, service, and response.
1201.27 Class actions.

Parties, Practitioners, and Witnesses

Sec.
1201.31 Representation.
1201.32 Witnesses; right to representation.
1201.33 Federal witnesses.
1201.34 Intervenors and amicus curiae.
1201.35 Substitution.
1201.36 Consolidation or joinder.
1201.37 Fees.

Presiding Officials

1201.41 Presiding officials.
1201.42 Disqualification of presiding official.
1201.43 Sanctions.

Hearings

1201.51 Scheduling the hearing.
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1201.55 Motions.
1201.56 Burden and degree of proof; affirmative defenses.
1201.57 Order of hearing.
1201.58 Closing the record.

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1201.61 Service of documents.
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1201.63 Production of evidence by order of presiding official.
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Discovery

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1201.81 Requests for subpoenas.
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1201.83 Service.
1201.84 Return of service.
1201.85 Enforcement.

Interlocutory Appeals

1201.91 Explanation.
1201.92 Criteria for certification.
1201.93 Procedure.

Ex Parte Communications

1201.101 Explanation and definitions.
1201.102 Prohibition.
1201.103 Placement in the record; sanctions.

Final Decisions

1201.111 Initial decision by presiding official.
1201.112 Jurisdiction of presiding official.
1201.113 Finality of decision.

Subpart C—Petitions for Review of Initial Decisions

1201.114 Filing of petition and cross petition for review.
1201.115 Contents of petition for review.
1201.116 Procedure for review or reopening.
1201.117 Board reopening and reconsideration of case.
1201.118 OPM petition for reconsideration.
1201.119 Judicial review.

Subpart D—Hearing Procedures for Original Jurisdiction Cases

Actions Brought by the Special Counsel

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1201.121 Scope and compliance with Subpart B.
1201.122 Filing and service in Special Counsel actions.
1201.123 Special Counsel complaints.
1201.124 Rights of employees.
1201.125 Answer.
1201.126 Final Orders of the Board.
1201.127 Request for stay.
1201.128 Administrative appeal, judicial review.
1201.129 Special Counsel actions.

Actions Against Administrative Law Judges

1201.131 Procedures.
1201.132 Board jurisdiction.
1201.133 Filing of complaint.
1201.134 Procedure.
1201.135 Presiding official.
1201.136 Showing required.

Removal From the Senior Executive Service

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1201.161 Action by the Commission, finality and judicial review.
1201.162 Board action on the Commission decision.
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Special Panel

1201.171 Referral of case to Special Panel.
1201.172 Organization of the Special Panel.
1201.173 Practices and procedures of the Special Panel.
1201.174 Enforcement of Special Panel decision.
1201.175 Judicial review of cases decided under 5 U.S.C. 7702.

Subpart F—Enforcement of Final Decision

1201.181 Authority and Explanation.
1201.182 Petition for enforcement.
1201.183 Enforcement action by the Board.

Subpart G—Saving Provisions

1201.191 Saving provisions.

Subpart H—Voluntary Expedited Appeals Procedure

General

1201.200 Scope and policy.

Election of and Filing for Voluntary Expedited Appeals Procedure

Sec.
1201.201 Election of voluntary expedited appeals procedure.
1201.202 Filing of request for voluntary expedited appeals procedure; contents; time limits.
1201.203 Joint appeals record.
1201.204 Procedures for cases involving allegations of discrimination.

Presiding Official and Hearing

1201.205 Selection and authority of presiding official.
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1201.207 Federal Witnesses.
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1201.215 Burden of proof.
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1201.219 Petitions for review.
1201.220 Standard of review.
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Appendix I to Part 1201—Merit Systems Protection Board Appeal Form

Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals

Appendix III to Part 1201—Approved Hearing Locations

Authority: 5 U.S.C. 1205 and 7701(j)

Subpart A—Jurisdiction and Definitions

§ 1201.1 General.

The Board exercises two types of jurisdiction, original and appellate.

§ 1201.2 Original jurisdiction: Definition and application.

The Board has original jurisdiction over cases in which no formal agency action has been taken including:

(a) Actions brought by the Special Counsel;

(b) Requests for informal hearings in cases of persons removed from the Senior Executive Service; and

(c) Actions against administrative law judges under 5 U.S.C. 7521.

§ 1201.3 Appellate jurisdiction: Definition and application.

(a) *Appellate jurisdiction generally.* The Board has jurisdiction over appeals from agency actions when the appeal is authorized by law, rule, or regulation. This appellate jurisdiction includes:

(1) Reduction in grade or removal for unacceptable performance (5 CFR Part 432; 5 U.S.C. 4303(e));

(2) Removal, reduction in grade or pay, suspension for more than 14 days, or furlough for 30 days or less for cause that will promote the efficiency of the service. (5 CFR 752, Subparts C and D; 5 U.S.C. 7512);

(3) Removal or suspension for more than 14 days of a career appointee in the Senior Executive Service (5 CFR Part 752, Subparts E and F; 5 U.S.C. 7541–7543);

(4) Reduction in force of a career appointee in the Senior Executive Service (5 U.S.C. 3595);

(5) Negative determination of competence for a general schedule employee (5 CFR 531.410; 5 U.S.C. 5335(c));

(6) Determinations affecting the rights or interests of an individual or of the United States under the Civil Service Retirement System (5 CFR Part 831; 5 U.S.C. 8347(d) (1)–(2));

(7) Disqualification of an employee or applicant because of a suitability determination (5 CFR 731.401);

(8) Termination during probation or the first year of a VRA appointment, where the employee alleges discrimination because of partisan political reasons or marital status, or that the termination was taken for conditions arising before appointment and was procedurally improper (5 CFR 315.806, 5 CFR 307.105(b));

(9) Termination of appointment under a managerial or supervisory probationary period where the employee alleges discrimination because of partisan political affirmation or marital status (5 CFR 315.908(b));

(10) Separation, reduction in grade, or furlough for more than 30 days, because of reduction in force (5 CFR 351.901);

(11) Furlough of a career appointee in the Senior Executive Service (5 CFR 359.805);

(12) Failure to restore an absent employee to employment following military service or partial or full recovery from a compensable injury (5 CFR 353.401);

(13) Employment of another applicant when an appellant is entitled to priority employment consideration after reduction in force or partial or full recovery from a compensable injury (5 CFR 302.501, 5 CFR 330.202);

(14) Failure to reinstate after service under the Foreign Assistance Act of 1961 (5 CFR 352.508);

(15) Failure to reemploy after movement between executive agencies during an emergency (5 CFR 352.209);

(16) Failure to reemploy after detail or transfer to an international organization (5 CFR 352.313);

(17) Failure to reemploy after service under the Indian Self-Determination Act (5 CFR 352.707);

(18) Failure to reemploy after service under the Taiwan Relations Act (5 CFR 352.807); and

(19) Employment practices administered by the OPM to examine and evaluate the qualifications of applicants for appointment in the competitive service (5 CFR 300.104).

(b) *Limitations on appellate jurisdiction, collective bargaining agreements and election of procedures:*

(1) For an employee covered by a collective bargaining agreement under 5 U.S.C. 7121, the negotiated grievance procedures contained in the agreement shall be the exclusive procedures for resolving any action which would otherwise be appealable to the Board, with the following exceptions:

(i) an appealable action involving discrimination under 5 U.S.C. 2302(b) (1), reduction in grade or removal under 5 U.S.C. 4303, or adverse action under 5 U.S.C. 7512, may be raised under (A) the Board's appellate procedures or (B) the negotiated grievance procedures, but not both;

(ii) any appealable action which is excluded from the application of the negotiated grievance procedures may be raised only under the Board's appellate procedures.

(2) *Choice of procedure.* When an employee has a choice of raising an appealable action under (i) the Board's appeal procedures or (ii) negotiated grievance procedures, the choice is deemed to have been made when the employee timely initiates an appeal to the Board or timely files a written grievance, whichever event occurs first.

(3) *Review of discrimination grievances.* If an employee chooses the negotiated grievance procedure under (2) above and alleges discrimination as described at 5 U.S.C. 2302(b) (1), then the employee, after having obtained a final decision under the negotiated grievance procedure, may request the Board to review that final decision. The request shall be filed with the Clerk of the Board pursuant to § 1201.154.

§ 1201.4 General definitions.

(a) *Presiding official.* Any person authorized by the Board to preside over any hearing or to make a decision on the record, including an attorney-examiner, an administrative judge, an administrative law judge, the Board, or any of the Members of the Board.

(b) *The Act.* The Civil Service Reform Act of 1978 (Pub. L. 95–454, as amended).

(c) *Pleading.* Written submission setting forth claims, allegations, arguments, or evidence, including briefs, motions, petitions, attachments and responses.

(d) *Motion.* A request to a presiding official to take a particular action.

(e) *Appropriate regional office.* That office listed in Appendix II in the area where the appellant's duty station was located when the agency action was taken. The Board is not limited, however, from transferring the matter for adjudication to another office when to do so would facilitate processing. For appeals from OPM reconsideration decisions which disallow individual applications for retirement benefits, and from adverse suitability determinations under 5 CFR Part 731, the appeal shall be filed with the regional office having jurisdiction over the area in which the appellant resides.

(f) *Party.* An individual, agency, intervenor, the Office of Personnel Management, or the Special Counsel, who is participating in a proceeding before the Board.

(g) *Petition for appeal.* The request filed with a Board regional office for review of an agency action.

(h) *Petition for review.* The request filed with the three-member Board in Washington, DC, for review of an initial decision of a presiding official.

(i) *Day.* Calendar day.

(j) *Service.* The process of furnishing a copy of any pleading to the Board and the other parties, either by mail or by personal delivery.

(k) *Date of Service.* The date documents are served as shown on the certificate of service.

(l) *Certificate of Service.* A document certifying that copies of pleadings were served on the Board and other parties. The certificate must be signed and dated.

(m) *Filed.* Except where otherwise provided, a document is considered filed on the date on which the submission is received in the appropriate Board office if the filing is by personal delivery. Filing by mail shall be determined by the postmark date; if no postmark date is evident on the mailing, it shall be presumed to have been mailed 5 days prior to receipt.

Subpart B—Hearing Procedures for Appellate Cases

General

§ 1201.11 Scope and policy.

The rules in this subpart apply to appellate proceedings of the Board except as otherwise provided in § 1201.13. These rules also apply to original jurisdiction proceedings of the Board except as otherwise provided in Subpart D. 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.

§ 1201.12 Revocation, amendment, or waiver of rules.

The Board may revoke, amend, or waive any of these regulations as they apply generally to all cases. Upon notice to all parties, a presiding official may, with respect to matters pending before him/her, and without providing other parties with opportunity of response, waive a Board regulation upon a determination that good cause has been shown, that no party will be unduly prejudiced, that the ends of justice will be served thereby, and that application of the regulation is not required by statute.

§ 1201.13 Internal appeals of Board employees.

Appeals of actions taken against Board employees shall be filed with the Clerk of the Board and will be assigned to an administrative law judge for adjudication pursuant to this subchapter, provided, however, that the policy of the Board will be to insulate such adjudications from agency involvement insofar as possible. Accordingly, initial decisions in such cases shall not be disturbed by the Board except in cases of demonstrated harmful procedural irregularity in the proceedings before the administrative law judge or clear error of law. In addition, the Board, as a matter of policy, will defer ruling on any interlocutory appeals or motions to disqualify the administrative law judge assigned to such cases until the initial decision has been issued.

Petitions For Appeal of Agency Action, Pleadings

§ 1201.21 Notice of appeal rights.

When an agency issues a decision notice to an employee on a matter appealable to the Board the agency shall provide:

(a) Notice of the time limits for appealing to the Board, the requirements of § 1201.22(c), and the address of the appropriate Board office for filing the appeal;

(b) A copy or access to a copy of the Board's regulations;

(c) A copy of the appeal form set forth in Appendix I of this part;

(d) Notice of any applicable rights to a grievance procedure; and

(e) Notice of the opportunity to request the voluntary expedited appeals procedure set forth at §§ 1201.200 through 1201.222, including a description of the procedure, as set forth in the Attachment to the appeal form.

§ 1201.22 Filing of petitions for appeal and response.

(a) *Place of filing.* Petitions and responses shall be filed at the appropriate Board regional office. (*See* § 1201.4(e).)

(b) *Time of filing.* A petition for appeal must be filed during the period beginning with the day after the effective date of the action being appealed until not later than 20 days after the effective date. A petition for appeal from a final or reconsideration decision which does not set an effective date must be filed within 25 days of the date of the issuance of the decision. (*See* § 1201.3(a), (5), (6), (7), (12), (13), (14), (15), (16), (17), and (18) of this Part for matters covered.) A response to a petition for appeal must be filed within 20 days of the date of the Board's acknowledgment order. The date of a filing by mail shall be determined by the postmark date; if no postmark date is evident on the mailing, it shall be presumed to have been mailed 5 days prior to receipt. If the filing is by personal delivery, it shall be considered filed on the date it is received in the regional office.

(c) *Timeliness of petitions for appeal.* (1) Any party who files a petition for appeal outside a time limit set by statute, regulation, or order of a presiding official, must file with the petition a motion for waiver of the time limit. The motion must contain evidence and argument showing good cause for the untimely filing. Such motions may be granted or denied without providing other parties the opportunity of response, in the presiding official's discretion.

(2) If a party fails to file a motion for waiver as provided in paragraph (c)(1), the presiding official or the Board may decide on the basis of the existing record whether there was good cause for the untimely filing or provide the party an opportunity to show cause why the appeal should not be dismissed as untimely.

(d) *Method of filing.* Filing must be made either by personal delivery during normal business hours to the appropriate Board regional office or by mail addressed to that office.

§ 1201.23 Computation of time.

To compute the number of days for filing, the first day counted shall be the day after the event from which the time period begins to run, and the last day of filing shall be included in the computation. If the last day for filing falls on a Saturday, Sunday, or Federal holiday, the first working day thereafter shall be the last day for timely filing.

Example: If an employee receives a decision notice which is effective on June 1, the 20 days for filing starts to run on June 2. The filing must be made by June 21. If June 21 is a Saturday, the last day for filing would be Monday, June 23.

§ 1201.24 Content of petition for appeal, right to hearing.

(a) *Content.* A petition for appeal must be filed by the appellant, his/her designated representative, or a party properly substituted under § 1201.35. Petitions may be in any format, including letter form, but must contain the following:

(1) The name, address, and telephone number of the appellant, and the name and address of the acting agency;

(2) The action taken by the agency and its effective date;

(3) A request for hearing if desired;

(4) A statement of the reasons why the appellant believes the agency action to be wrong;

(5) A statement of the action the appellant would like the presiding official to order;

(6) The name, address, and telephone number of the appellant's representative, if any;

(7) Attachment of any relevant documents including the decision notice;

(8) A statement that the appellant or anyone acting on his/her behalf has or has not filed a grievance or complaint with any agency regarding this matter;

(9) Signature of the appellant and the representative, if any; and

(10) A request, if the appellant desires, to have the matter processed under the voluntary expedited appeals procedure set forth at §§ 1201.200 through 1201.222.

(b) Failure to state a claim or defense in the petition shall not bar its submission later unless it is shown that the late submission would prejudice the rights of the other parties or substantially delay the proceedings.

(c) *Use of the form.* Completion of the form in Appendix I of this part, if appropriate, shall constitute compliance with paragraph (a) of this section and § 1201.31 if a representative is

designated in the form. Appendix I of this part contains an entry for the election of the voluntary expedited procedure and an explanation thereof.

(d) *Right to hearing.* Under 5 U.S.C. 7701, an appellant has a right to a hearing. If the parties choose to utilize the voluntary expedited appeals procedure, the procedures for a hearing shall be in accordance with § 1201.206.

(e) *Timely request.* A request for a hearing shall be filed with the petition for appeal, or within such other time periods as set by the presiding official. Failure to make a timely request will be deemed to constitute a waiver of the right to a hearing. If a hearing is not requested, or if the appellant fails to appear for a scheduled hearing without good cause, the appeal may be adjudicated on the record.

§ 1201.25 Content of agency response, request for hearing.

(a) *Content.* The agency response to a petition for appeal shall contain the following:

(1) The name of the appellant and the acting agency;

(2) A statement of the agency action taken against the appellant and the reasons therefor;

(3) A specific response admitting, denying or explaining, in whole or in part, each allegation of the appellant's petition;

(4) All documents contained in the agency record of the action;

(5) An acceptance or declination by the agency of the voluntary expedited appeals procedure, if that procedure has been requested by the appellant;

(6) Designation of and signature by the authorized agency representative; and

(7) Any other documents or responses requested by the Board.

(b) *Request for hearing.* The agency response may request a hearing on the appeal, stating the reasons for the request, which may be granted by the presiding official as set forth in § 1201.41(b)(5) of this part.

§ 1201.26 Number of pleadings, service, and response.

(a) *Number.* One original and one copy of a petition for appeal must be filed with the appropriate Board office. One original of all subsequent pleadings must be filed.

(b) *Service*—(1) *Service by the Board.* The Board will serve by mail copies of a petition for appeal upon the parties to the proceeding. The Board will attach a service list indicating the names and addresses of the parties to the proceeding or their designated representatives.

(2) *Service by the parties.* The parties shall serve on each other one copy of all pleadings, as defined by § 1201.4(c), with the exception of petitions for appeal. 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 presiding official or these regulations, a party shall file a response to a pleading from another party within 15 days from the date of service of that pleading.

(d) *Paper size.* Pleadings and attachments must be filed on 8½x11 inch size paper to comply with standards established for U.S. Courts.

§ 1201.27 Class actions.

(a) *Petition.* One or more employees may file and appeal as a representative(s) of a class of employees. The presiding official shall hear the case as a class action if he/she finds a class action will be the most efficient and fair way to adjudicate the appeal and will adequately protect the interests of all parties. The filing of a petition for class action shall toll the time limit for individual members of the potential class to file their individual appeals.

(b) *Procedure.* The presiding official shall consider the appellant's request and any opposition thereto and issue an order within 30 days of the filing of the petition stating whether the appeal is to be heard as a class action. If the presiding official denies the petition, the affected appellants shall have 25 days from the denial in which to file individual appeals. Each individual appellant has the responsibility to either file an individual appeal within the original time limit or to keep apprised of the status of a class action request and file an appeal within the additional 25-day period, if class action is denied.

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

Parties, Practitioners, and Witnesses

§ 1201.31 Representation.

(a) A party 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 appeal or responsive pleading. Any change in representation or revocation shall also be in writing, and must be filed and served on the other parties in accordance with § 1201.26.

(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 presiding official filed within 15 days after the date of service of the notice of designation, and shall be ruled upon prior to consideration of the case on the merits. 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 presiding official, on his/her own motion, may disqualify a party's representative on the grounds described in paragraph (b) of this section.

§ 1201.32 Witnesses; right to representation.

Witnesses shall have the right to representation when testifying. The representative of a nonparty witness has no right to examine the witness or otherwise participate in the development of testimony.

§ 1201.33 Federal witnesses.

Every Federal agency or corporation shall make its employees or personnel available to furnish sworn statements or to appear as witnesses at the hearing when ordered by the presiding official. When providing such statements or testimony, witnesses shall be in official duty status.

§ 1201.34 Intervenors and Amicus Curiae.

(a) *Explanation of Intervention.* Intervenors are organizations or persons who want to participate in a proceeding because they believe the proceeding, or its outcome, may affect their rights or duties. Intervenors as a "matter of right" are those parties who have a statutory right to participate. "Permissive" intervenors are those parties who may be permitted to participate if the proceeding will affect them directly and if intervention is otherwise appropriate under law. A request to intervene may be made by motion filed with the presiding official in accordance with § 1201.55.

(b) *Intervenors as a matter of right.* (1) The Director of OPM may intervene as a matter of right under 5 U.S.C. 7701(d)(1).

Such intervention shall be filed at the earliest practicable time.

(2) The Special Counsel may intervene as a matter of right under 5 U.S.C. 1206(i). Such intervention shall be filed at the earliest practicable time.

(c) *Permissive intervenors.* (1) Any person may, by motion, ask the presiding official, or the Board in a Petition for Review, for permission to intervene. The motion shall state the reasons why the person should be permitted to intervene.

(2) A motion for permission to intervene will be granted where the requester will be affected directly by the outcome of the proceeding. Any person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b) may request intervention. A presiding official's denial of a motion for permissive intervention may be appealed to the Board under § 1201.91.

(d) *Role of intervenors.* Intervenors will be considered full parties to the hearing and other proceedings 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; and

(2) Permissive intervenors may participate only on the issues affecting them, as determined by the presiding official or the Board, as appropriate.

(e) *Amicus curiae.* Any person or organization, including those who do not qualify as intervenors may, in the discretion of the presiding official or the Board, be granted leave to file amicus curiae briefs.

§ 1201.35 Substitution.

(a) If an appellant dies or is otherwise unable to pursue the appeal, the processing of the appeal shall be completed upon substitution of proper parties or by the representative of the original party. Such substitution will be in accordance with existing law. Substitution will not be permitted where the interests of the appellant have terminated because of the appellant's 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 appellant or other disabling event.

(c) In the absence of a timely substitution of party, the processing of the appeal may continue if, in the judgment of the presiding official, the interests of the proper party will not be prejudiced.

§ 1201.36 Consolidation or joinder.

(a) *Explanation.* (1) Consolidation may occur where two or more parties have cases united because they contain identical or similar issues. For example, individual appeals under a single reduction-in-force action might be consolidated.

(2) Joinder may occur where one person has two or more appeals pending and they are 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 presiding official.* A presiding official may consolidate or join cases on his/her own motion or on the motion of a party if to do so would:

(1) Expedite processing of the cases; and

(2) Not adversely affect the interests of the parties.

(c) Any objection to a motion for consolidation or joinder must be filed within 10 days of the date of service of the motion.

§ 1201.37 Fees.

(a) *Attorney fees.* Except as provided in subsection (a)(1) of this section, the presiding official may require payment by the agency of reasonable attorney fees if the appellant is the prevailing party and payment is warranted in the interest of justice.

(1) If an appellant is the prevailing party and the decision is based on a finding of discrimination prohibited under 5 U.S.C. 2302(b)(1), the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

(2) Requests by prevailing appellants for payment of attorney fees shall be filed by motion with a copy served on the agency within 20 days of the date that an initial decision becomes final under § 1201.113 or within 25 days of the date of a final decision under § 1201.116. The agency may file a responsive pleading within 20 days of the date of service of the motion. Whether the decision is under § 1201.113 or § 1201.116, the motion shall be filed with the presiding official in the case, and the ruling on such motion shall be made in an addendum decision. The motion for fees shall state why the appellant believes he/she is entitled to an award under the applicable statutory standard, and shall be supported by evidence substantiating the amount of the request. Such evidence shall include at least:

(i) Accurate and current time records;

(ii) A copy of the terms of the fee agreement (if any); and

(iii) The attorney's customary billing rate for similar work if the attorney has a billing practice to report or, in the absence of such a practice, other evidence of the prevailing community rate sufficient to establish a market value for the services rendered. A petition for review by the Board of the addendum decision shall be filed in accordance with § 1201.114 within 35 days of the date of that decision.

(b) *Witness fees.* (1) Federal employees: Employees of a Federal agency or corporation testifying in any proceeding before the Board or making a statement for the record shall be in official duty status and shall not receive witness fees. Payment of travel and per diem expenses shall be governed by applicable law and regulation.

(2) *Other witnesses.* Witnesses who are not covered by paragraph (b)(1) of this section are entitled to the same witness fees as those paid to subpoenaed witnesses under 28 U.S.C. 1821.

(3) *Payment of witness fees and travel costs.* Witness fees shall be paid by the party requesting the presence of the witness and 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.

Presiding Officials

§ 1201.41 Presiding officials.

(a) *Exercise of authority.* Presiding officials may exercise authority as provided in paragraphs (b) and (c) of this section upon their own motion or upon the motion of a party, as appropriate.

(b) *Authority.* Presiding officials 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 § 1201.81;

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

(4) Rule upon the institution of discovery procedures as appropriate under § 1201.73;

(5) After advance notice to the parties, order a hearing on his/her own initiative or at the request of the agency if the presiding official determines that a hearing is necessary:

(i) To resolve an important issue of credibility;

(ii) To insure that the record is fully developed on significant issues; or

(iii) To otherwise ensure a fair and just adjudication of the case.

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

(7) 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 the testifying witness;

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

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

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

(11) Impose sanctions as provided under § 1201.43 of this part;

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

(13) Issue initial decisions.

(c) *Settlement.*—(1) *Settlement discussion.* Informal settlement of the dispute may be raised by the presiding official with the parties at any time. The parties may agree to waive the prohibitions against *ex parte* communications during settlement discussions, including agreement for any limitations upon the waiver.

(2) *Agreement.*—If the parties agree to a settlement without a decision on the merits of the case, the settlement agreement will be the final and binding resolution of the appeal, and the presiding official will dismiss the appeal with prejudice.

(i) If the agreement is offered into the record by the parties and approved by the presiding official, it will be made a part of the record, and the Board will retain jurisdiction to insure compliance with the agreement.

(ii) If the agreement is not entered into the record, the Board will not retain jurisdiction to insure compliance.

§ 1201.42 Disqualification of presiding official.

(a) In the event that a presiding official 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) A party may file a motion requesting the presiding official to withdraw on the basis of personal bias or other disqualification. This motion shall be filed as soon as the party has reason to believe there is a basis for disqualification, and shall be accompanied by an affidavit setting forth the reasons for the request.

(c) The presiding official shall rule on the motion, the timeliness of the motion, and the sufficiency of the affidavit. If the motion is denied, the party requesting withdrawal may request certification of the issue to the Board as an interlocutory appeal under § 1201.91. Failure of the party to request certification shall be considered a waiver of the request for withdrawal.

§ 1201.43 Sanctions.

The presiding official may impose sanctions upon the parties as necessary to serve the ends of justice, including but not limited to the instances set forth in paragraphs (a), (b), and (c) of 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 presiding official may:

(1) Draw an inference in favor of the requesting party with regard 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; and

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

(b) *Failure to prosecute or defend.* If a party fails to prosecute or defend an appeal, the presiding official may dismiss the appeal with prejudice or rule for the appellant.

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

Hearings

1201.51 Scheduling the hearing.

(a) The notice of hearing shall fix the date, time, and place of the hearing. The hearing shall be scheduled not earlier than 15 days after the date of the notice unless the parties agree to an earlier date. The agency, upon request of the presiding official, shall provide appropriate hearing space.

(b) The presiding official may change the time, date, or place of the hearing, or suspend, adjourn, or continue the hearing. Any such change shall not require the 15-day notice provided in paragraph (a), of this section. 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.

(c) The Board has established certain approved hearing locations, which are published as a Notice in the **Federal Register.** (See Appendix III) Parties may file motions, for good cause, to request a different hearing location. Rulings on such motions will be based on a showing that a different location will be more advantageous to all parties and the Board.

§ 1201.52 Public hearings.

Hearings shall be open to the public. However, the presiding official may order a hearing or any part thereof closed, where to do so would be in the best interests of the appellant, a witness, the public or other affected persons. Any order closing the hearing shall set forth the reasons for the presiding official's decision. Any objections thereto shall be made a part of the record.

§ 1201.53 Verbatim record.

(a) *Preparation.* A verbatim record made under the supervision of the presiding official shall be kept of every hearing and shall be the sole official record of the proceeding.

(b) *Copies.* Upon request, a copy of a tape recording or transcript (if prepared) of the hearing shall be made available to the parties upon payment of costs. Requests for copies of transcripts shall be directed to the official hearing reporter. Requests for copies of a tape recording shall be directed to the presiding official.

(c) *Exceptions to payment of cost.* Exceptions to the payment requirement may be granted in extenuating circumstances for good cause shown. Motions for an exception shall be filed with the presiding official, in writing, and accompanied by an affidavit setting forth the reasons for the request.

(d) *Corrections.* Corrections to the official transcript will be permitted upon motion from a party or by the presiding official on his/her own motion. Motions for correction must be filed within 10 days from the receipt of a transcript. Corrections of the offical transcript will be permitted only when errors of substance are involved and only upon approval of the presiding official.

§ 1201.54 Official record.

Exhibits and the verbatim record of testimony, if a hearing is held, together with all pleadings filed in the course of

the appellate proceedings, shall constitute the exclusive and official record.

§ 1201.55 Motions.

(a) *Form.* Motions shall be in writing except that oral motions may be made during the course of a hearing. All motions shall state the reasons in support thereof. Written motions shall be filed with the presiding offical or the Board, as appropriate, and served upon all other parties in accordance with § 1201.26(b)(2). A party filing a motion for extension of time, a motion for postponement of a hearing, or any other procedural motion should first contact the other party to determine if there is any objection and should state in the motion whether or not the other party has an objection. A party filing any motion should submit a proposed order with the motion.

(b) *Objection.* Unless otherwise specified by the presiding official or these regulations, any objection to a written motion must be filed within 10 days from the date of service of the motion. In the discretion of the presiding offical, motions for extension of time to file pleadings may be granted or denied without providing opportunity of response to the motions.

(c) *Motions for extension of time.* Motions for extension of time will be granted only for good cause shown.

§ 1201.56 Burden and degree of proof; affirmative defenses.

(a) *Burden and degree of proof.*

(1) *Agency:* Under 5 U.S.C. 7701(c)(1) the agency action must be sustained by the Board if:

(i) It is brought under 5 U.S.C. 4303 or 5 U.S.C. 5335 and is supported by substantial evidence; or

(ii) It is brought under any other provision of law or regulation and is supported by a preponderance of the evidence.

(2) *Appellant:* The appellant shall have the burden of proof, by a preponderance of the evidence, as to:

(i) Issues of jurisdiction;

(ii) Timeliness of filing; and

(iii) Affirmative defenses.

In appeals from reconsideration decisions of the Office of Personnel Management involving retirement benefits, the appellant shall have the burden of proof by a preponderance of the evidence, if the application was filed by the appellant. An appellant who has received an overpayment from the Civil Service Retirement and Disability Fund has the burden of proving by substantial evidence that he/she is eligible for waiver or adjustment.

(b) *Affirmative defenses of the appellant.* Under 5 U.S.C. 7701(c)(2), the Board is required to overturn the action of the agency even where the agency has met the evidentiary standard set forth in paragraph (a) of this section, in any case where the appellant:

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

(2) Demonstrates that the decision was based on any prohibited personnel practice described in 5 U.S.C. 2302(b); or

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

(c) *Definitions.* For purposes of this part, the following definitions shall apply:

(1) Substantial evidence: 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.

(2) Preponderance of the evidence: That degree of relevant evidence which a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

(3) Harmful error: Error by the agency in the application of its procedures which, in the absence or cure of the error, would have likely to cause the agency to reach a conclusion different than the one reached. The burden is upon the appellant to show the error was harmful, i.e., caused substantial harm or prejudice to his/her rights.

§ 1201.57 Order of hearing.

(a) In cases where an action has been taken against an employee by the agency, the agency shall present its case first. The appellant may then present evidence.

(b) The appellant shall proceed first at hearings convened on the issues of:

(1) Jurisdiction;

(2) Timeliness; or

(3) OPM disallowance of an application for retirement benefits, when the application was filed by the appellant. Then the agency may present its evidence.

(c) The presiding official may vary the normal order of moving forward when deemed appropriate in the circumstances of a specific case.

§ 1201.58 Closing the record.

(a) When there is a hearing, the record shall be closed at the conclusion of the hearing. However, when the presiding official 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 presiding official grants for that purpose.

(b) If the appellant waives a hearing, the record shall be closed on the date set by the presiding official as the final date for the receipt of submissions of the parties.

(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 readily available prior to the closing of the record. However, the presiding official shall make a record of any motions for attorney fees, petitions for enforcement, any supporting documentation, and determinations thereon, and any approved correction to the transcript.

Evidence

§ 1201.61 Service of documents.

All documents filed with the pleadings shall be served upon all other parties in accordance with § 1201.26(b)(2).

§ 1201.62 Admissibility.

(a) Evidence or testimony may be excluded from consideration by the presiding official if it is irrelevant, immaterial or unduly repetitious.

(b) Any evidence and testimony offered in the hearing and excluded by the presiding official shall be described and that description made a part of the record.

§ 1201.63 Production of evidence by order of presiding official.

At any stage of a proceeding, the presiding official may request further evidence concerning an issue and order its submission.

§ 1201.64 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 relevant evidence given may be excluded from consideration.

§ 1201.65 Admission of facts and genuineness of documents.

(a) The presiding official may order any party to respond to requests for an 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 the presiding official, the party on

whom the request is served must file with the presiding official:

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

(2) An objection to the request in whole or in part on the ground that the matters contained therein are privileged, irrelevant or otherwise improper.

§ 1201.66 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.

§ 1201.67 Official notice.

The presiding official, on his/her own motion or on motion of a party, may take official notice of matters of common knowledge or matters that can be verified. The parties shall be given an opportunity to object to the taking of such notice. Official notice taken of any fact satisfies a party's burden of proving the fact noticed.

Discovery

§ 1201.71 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 preparation 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 of Board intervention.

§ 1201.72 Explanation and scope.

(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 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. However, the federal rules shall be deemed to be instructive rather than controlling.

(b) *Scope.* Pursuant to § 1201.72(c), discovery covers any nonprivileged matter which is relevant to the issues involved in the 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. Discovery requests to nonparties and nonparty federal agencies and employees are limited to information which appears directly material to the issues involved in the appeal.

(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, requests for production of documents or things for inspection or copying, and requests for admission addressed to parties. Failure to deny a request for admission shall not be deemed to constitute a binding admission.

§ 1201.73 Procedures governing discovery.

(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—

(1) State the time limit for responding, as prescribed in § 1201.73(d), and

(2) In the case of a request for a deposition of a party or an employee of a Federal agency party:

(i) Shall specify the time and place of the taking of the deposition, and

(ii) Shall also be served on the person to be deposed.

When a request for discovery is directed to an officer or employee of a Federal agency party, 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 including nonparty Federal agencies.* Parties are encouraged to attempt to obtain voluntary discovery from nonparties whenever possible. A party seeking discovery from a nonparty Federal agency or employee shall initiate the process by serving a request for discovery on the nonparty Federal agency or employee. Discovery from other nonparties may be initiated by serving a request for discovery on the nonparty directly. Absent such a request or upon failure to obtain voluntary cooperation, discovery from a nonparty may be obtained by a written motion directed to the presiding official, showing the relevance, scope and materiality of the particular information sought and, in addition in the case of a deposition, the date, time, and place of the proposed deposition. A ruling on the motion will be issued by an authorized official of the Board and will be served on the moving party together with a subpoena, if approved, directed to the individual or entity from which discovery is sought, specifying the manner and time limit for compliance. It shall be the responsibility of the moving party to serve or arrange for service of a Board-approved discovery request and subpoena on the individual or entity.

(c) *Responses to discovery requests.* (1) A party, or a Federal agency which is not a party, shall answer a discovery request within the time provided by § 1201.73(d)(2), 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.

(2) Upon the failure or refusal of a party to respond in full to a discovery request, or a nonparty to respond in full to Board-approved discovery, the requesting party may file with the presiding official a motion to compel. A copy of the motion shall be served on the other party and on any nonparty entity or person from whom the discovery was sought. The motion shall be accompanied by:

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

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

(3) The other party and any other entity or person from whom discovery was sought may respond to the motion to compel within the time limits set forth in (d)(4) below.

(d) *Time limits.* (1) Initial requests or motions for discovery shall be served within 25 days after the date of issuance of the Board's order to the respondent agency to produce the agency file and response.

(2) A party or nonparty shall file a response to a discovery request promptly, but not later than 20 days after the date of service of the request or order of the Board. 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 request for deposition or in the subpoena, unless otherwise agreed by the parties.

(3) A motion to depose nonparties (along with a request for a subpoena) shall be submitted to the presiding

official within the time limits set forth in paragraph (d)(1) above or as otherwise directed.

(4) A motion for an order compelling discovery shall be filed with the presiding official within 10 days of the date of service of objections, or within 10 days of the expiration of the time limit for response when no response is received. Opposition to a motion to compel must be filed with the presiding official within 10 days of the date of service of the motion.

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

§ 1201.74 Orders for discovery.

(a) *Motion for an order compelling discovery.* Motions for orders compelling discovery and motions for appearance of nonparties shall be filed with the presiding official in accordance with § 1201.73 (c)(2) and (d)(4) above.

(b) *Content of order.* Any order issued shall 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 a party or other individual or entity from undue expense, embarrassment or oppression;

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

(4) Other restrictions upon the discovery process as determined by the presiding official.

(c) *Noncompliance.* Failure to comply with an order compelling discovery may subject the noncomplying party to sanctions under 5 CFR 1201.43.

§ 1201.75 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.

Subpoenas

§ 1201.81 Requests for subpoenas.

(a) *Request.* Requests for the issuance of subpoenas requiring the attendance and testimony of witnesses or the production of documents or other evidence under 5 U.S.C. 1205(b)(2)(A) shall be filed with the presiding official. Subpoenas are not ordinarily required to obtain the attendance of federal employees as witnesses.

(b) *Form.* Requests for subpoenas shall be filed with the presiding official in writing and shall specify with particularity the books, papers, or testimony desired, supported by a showing of general relevance and reasonable scope, and a statement of the facts expected to be proven thereby.

(c) *Rulings.* Where the presiding official does not have the authority to issue subpoenas, the request shall be referred with a recommendation for decision to an appropriate official. Such official shall be an administrative law judge or a Member of the Board, who shall promptly rule on the request. Where the presiding official has the authority, he/she shall rule directly on the request.

§ 1201.82 Motion to quash.

Any person to whom a subpoena is directed or any party 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 presiding official.

§ 1201.83 Service.

A subpoena may be served by any person at least 18 years of age who is not a party, including a private process server or other person authorized to serve process in actions brought in state courts of general jurisdiction or in Federal courts. Responsibility for service of a requested subpoena rests with the party who initiated the request and to whom the subpoena has been issued.

§ 1201.84 Return of service.

The person who has served the subpoena shall certify on the return of service that service was made (a) by delivery to the witness in person, (b) by registered or certified mail, or (c) by delivery to a responsible person (named) at the residence or place of business (as appropriate) of the person to be served, and that the prescribed fees have been tendered or provided for.

§ 1201.85 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 presiding official 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 presiding official, shall submit affidavit evidence of the failure or refusal to obey the subpoena. The Board, pursuant to 5 U.S.C. 1205(c), may then request the appropriate United States district court to enforce the subpoena.

Interlocutory Appeals

§ 1201.91 Explanation.

An interlocutory appeal is an appeal to the Board of a decision made by a presiding official during the course of a proceeding. This appeal may be permitted by the presiding official if he/she determines that the issue presented is of such importance to the proceeding that it requires the Board's immediate attention. A motion for certification of an interlocutory appeal may be made by either party or the presiding official may, upon his/her own motion, certify an interlocutory appeal to the Board. The Board makes a decision on the issue and the presiding official acts in accordance with that decision.

§ 1201.92 Criteria for certification.

The presiding official 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.

§ 1201.93 Procedure.

(a) *Motion for certification.* A party seeking review by interlocutory appeal must file a motion for certification within 10 days of the date of the presiding official's determination. The motion shall be filed with the presiding official, and shall include arguments in support of both the certification and the determination to be made by the Board. The opposing party may file objections within 10 days of the date of service of the motion, or such other time period as the presiding official may designate.

(b) *Certification and review.* The presiding official shall grant or deny a motion for certification within 5 days following receipt of all pleadings or within 10 days of the date of receipt of the motion if no response is filed. If certification is granted, the record shall be referred to the Board. If certification is denied the issue may be raised in a petition for review filed after the issuance of the initial decision, in accordance with 5 CFR 1201.113 and 1201.114.

(c) *Rulings.* Rulings of the presiding official may not be appealed during the course of the hearing unless the official

certifies the ruling for review by the Board.

(d) *Stay of hearing.* The stay of the hearing during the time an interlocutory appeal is pending is at the discretion of the presiding official. However, this will not preclude the Board from staying a hearing on its own motion during the time an interlocutory appeal is pending.

Ex Parte Communications

§ 1201.101 Explanation and definitions.

(a) *Explanation.* Ex parte communications are oral or written communications between decision-making personnel of the Board and an interested party to a proceeding without providing the other parties a chance to participate. Not all ex parte communications are prohibited, but only those which involve the merits of the case or those which violate other rules requiring submissions to be in writing.

Accordingly, interested parties may make inquiries about such matters as the status of a case, when it will be heard, and the method for transmitting evidence to the Board. Parties may not inquire about such matters as what defense they should use or whether their evidence is adequate, and the parties may not make a submission orally which is required to be in writing.

(b) *Definitions for purposes of this section.*

(1) "Interested party" includes:

(i) Any party or representative of a party involved in a proceeding before the Board; or

(ii) Any other person who might be affected by the outcome of a proceeding before the Board.

(2) "Decision-making personnel" means any presiding official and/or an employee of the Board who reasonably can be expected to participate in the decision-making process of the Board.

§ 1201.102 Prohibition.

Except as otherwise provided in § 1201.41(c)(1), ex parte communications concerning the merits of any matter before the Board for adjudication or which otherwise violate rules requiring written submissions are prohibited from the time the persons involved have knowledge that the matter may be considered by the Board until the Board has rendered a final decision.

§ 1201.103 Placement in the record; sanctions.

(a) Any communication made in violation of this section shall be made a part of the record and an opportunity for rebuttal allowed. If the communication was oral, a memorandum stating the substance of the discussion shall be placed in the record.

(b) The presiding official or the Clerk of the Board, as appropriate, will give the parties written notification that the regulation has been violated and give the parties 10 days to file a response.

(c) The following sanctions shall be available:

(1) *Parties:* The offending party may be required to show cause why, in the interest of justice, his/her claim, interest or motion should not be dismissed, denied, or otherwise adversely affected.

(2) *Board personnel:* Offending Board personnel will be treated in accordance with the Board's standards of conduct.

(3) *Other persons:* The Board may invoke such sanctions against offending parties as may be appropriate under the circumstances.

Final Decisions

§ 1201.111 Initial decision by presiding official.

(a) The presiding official shall prepare an initial decision after the closing of the record. Such initial decision shall be immediately transmitted to the Clerk of the Board, to the Director of OPM, and to all parties to the appeal, including named parties and intervenors, whether permissive or of right.

(b) Each initial decision shall contain:

(1) Findings of fact and conclusions of law, as well as the reasons or bases therefor, upon all the material issues of fact and law presented on the record;

(2) An order as to the final disposition of the case, including appropriate relief;

(3) The date upon which the decision will become final, which, for purposes of this section, shall be 35 days after issuance; and

(4) A statement of any further process available, including, as appropriate: petition for enforcement under § 1201.182, petition for review under § 1201.114 and judicial review.

§ 1201.112 Jurisdiction of presiding official.

After issuing the initial decision, the presiding official shall retain jurisdiction over the case only to the limited extent necessary to correct the transcript, when one is obtained; to rule on motions for exception to the requirement of payment for a transcript; to rule on a request by the appellant for attorney fees; and to process any petition for enforcement filed under Subpart F of this part.

§ 1201.113 Finality of decision.

The initial decision of the presiding official shall become final 35 days after issuance. Such decisions are not precedential.

(a) *Exceptions.* The initial decision shall not become final if, within 35 days after issuance of the decision, any party files a petition for review or if the Board reopens the case on its own motion.

(b) *Petition for review denied.* If the Board denies all petitions for review, the initial decision shall become final upon the issuance of the last denial.

(c) *Petition for review granted or case reopened.* If the Board grants a petition for review or a cross petition for review, reopens or dismisses a case, the decision of the Board shall be the final decision unless otherwise specified therein.

(d) *Extensions.* The Board may extend the 35-day time limit for filing a petition for good cause shown as specified in § 1201.114.

(e) *Exhaustion.* Administrative remedies are considered exhausted when a decision becomes final in accordance with this section.

Subpart C—Petitions for Review of Initial Decisions

§ 1201.114 Filing of petition and cross petition for review.

(a) *Who may file.* Any party to the proceeding, the Director of OPM, or the Special Counsel may file a petition for review. The Director of OPM may request review only if he/she is of the opinion that the decision is erroneous and will have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of OPM (5 U.S.C. 7701(e)(2)). All submissions to the Board must contain an original signature of the appellant or the party's designated representative.

(b) *Cross petition for review.* If a timely petition for review is filed by a party, the Director of OPM or the Special Counsel, a cross petition for review may be filed by any other party, the Director of OPM or the Special Counsel within 25 days of the date of service of the petition for review. Issues not raised in the petition for review will not normally be considered by the Board unless raised in a timely filed cross petition for review.

(c) *Place for filing.* A petition for review, cross petition for review, responses thereto and all motions and pleadings associated therewith shall be filed with the Clerk of the Merit Systems Protection Board, Washington, D.C. 20419, either by personal delivery during normal business hours or by mail addressed to the Clerk of the Board.

(d) *Time for filing.* Any petition for review must be filed within 35 days of issuance of the initial decision. A cross petition for review must be filed within 25 days of service of the petition for review. Any response to a petition for review or to a cross petition for review

must be filed within 25 days after the date of service of the petition or cross petition. The date of filing shall be determined by the date of mailing indicated by the postmark date. If no postmark date is evident on the mailing, it shall be presumed to have been mailed five days prior to receipt. If the filing is by personal delivery, it shall be considered filed on the date it is received by the Clerk of the Board.

(e) *Extension of time to file.* Motions for extensions of time to file a petition for review, cross petition or response shall be granted only upon a showing of good cause. Such motions must be filed with the Clerk of the Board in advance of the date on which the petition of other pleading is due. Motions for extension of time may be granted or denied without providing other parties the opportunity to comment, in the Board's discretion. Motions for extensions shall be accompanied by an affidavit showing good cause for the request, or shall be submitted pursuant to 28 U.S.C. 1746, which requires a signed and dated declaration or statement subscribed as true under penalty of perjury. Such affidavit or declaration must make a specific and detailed showing of the circumstances alleged to constitute good cause and must be accompanied by documentation or other evidence to support the matters asserted.

(f) *Late filings.* Unless an extension of time has been specifically granted by the Board pursuant to paragraph (e) of this section or is pending before the Board, any petition for review, cross petition for review, or response which is filed late must be accompanied by a motion for waiver and either an affidavit or signed and dated declaration or statement subscribed as true under penalty of perjury, pursuant to 28 U.S.C. 1746 showing good cause for the untimely filing. Such showing must include:

(1) The reasons for failure to request an extension in advance of the filing date; and

(2) The reasons necessitating the late filing. Any response filed to the motion for waiver may be included in the response to the petition for review, cross petition for review or response to the cross petition for review. Such response will not extend the period of time required by § 1201.114(d) to file a cross petition for review or to respond to the petition or cross petition. In the absence of a motion for waiver, the Board may, in its discretion, determine on the basis of the existing record whether there was good cause for the untimely filing or provide the proponent of the submission opportunity to show cause why it should not be dismissed or excluded as untimely.

(g) *Intervention.*—(1) *By Director of OPM.* Pursuant to 5 U.S.C. 7701(d), the Director of OPM may intervene in a case before the Board under the standards set forth in that section, provided that right is exercised as early in the proceeding as practicable. For purposes of this paragraph, if the Director did not intervene in the case before the regional office, such intervention will be considered timely if it is filed with the Clerk of the Board within 20 days of the date of service of the cross petition or response to the petition for review, or if no response is filed, within 20 days of the date on which it is due. The Board may, in its discretion, at the Director's request, allow an additional period for the filing of the brief on intervention. A party may file a response to the Director's brief within 15 days of the date of service. The Director shall serve his notice of intevention and brief on all parties.

(2) *By Special Counsel.* Pursuant to 5 U.S.C. 1206(i), the Special Counsel may intervene as a matter of right. For purposes of this paragraph, if the Special Counsel did not intervene in the case before the regional office, such intevention will be considered timely if it is filed with the Clerk of the Board within 20 days of the date of service of the cross petition or response to the petition for review, or if no response is filed, within 20 days of the date on which it is due. The Board may, in its discretion, at the Special Counsel's request, allow an additional period for the filing of the brief on intervention. A party may file a response to the Special Counsel's brief within 15 days of the date of service. The Special Counsel shall serve his notice of intervention and brief on all parties.

(3) *Permissive intervenors.* Any person may, by motion, request the Board in a petition for review, for permission to intervene. The motion shall state in detail the reasons why the person should be permitted to intervene. A motion for permission to intervene will be granted where the requester will be affected directly by the outcome of the proceeding. Any person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b) may request to intervene.

(h) *Service.* For purposes of § 1201.114, service occurs upon filing, as determined under paragraph (d) of this section. Copies of the petition for review, cross petition for review, response, and all other motions and pleadings in connection therewith must be served by the party submitting the pleading upon all parties to the proceeding and their designated representatives. Service may be made by mailing or delivering personally a copy of the submission to each party and representative on the service list for the initial decision. The submission must be accompanied by a certificate specifying how and when such service was made. It is the duty of all parties and representatives to notify the Board and each other in writing of any changes in the names and addresses on the service list.

(i) *Closing the record.* The record shall close upon expiration of the period for filing the response to the petition for review, or to the cross petition for review, or to the brief on intervention, if any, or on such other date as set by the Board. Once the record is closed, no additional evidence or argument shall be considered except upon a showing that new and material evidence has become available which was not available prior to the closing of the record.

§ 1201.115 Contents of petition for review.

The petition for review shall set forth objections to the initial decision, supported by references to applicable laws or regulations, and with specific reference to the record. After providing an opportunity for response by other parties, the Board may grant a petition for review when it is established that:

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

(b) The decision of the presiding official is based on an erroneous interpretation of statute or regulation.

§ 1201.116 Procedure for review or reopening.

(a) In any case reopened or reviewed, the Board may:

(1) Issue a single decision which grants a Petition for Review, reopens the appeal and also decides the case;

(2) Hear oral arguments;

(3) Require the filing of briefs;

(4) Remand the proceedings to the presiding official 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.

(b) The Board may affirm, reverse, remand, modify or vacate the decision of the presiding official, in whole or in part. Where appropriate, the Board shall issue a final decision and order a date for compliance.

§ 1201.117 Board reopening and reconsideration of case.

The Board may reopen and reconsider a decision of a presiding official on its own motion at any time, notwithstanding any other provisions of this part.

§ 1201.118 OPM petition for reconsideration.

(a) *Criteria.* Pursuant to 5 U.S.C. 7703(d), the Director of the Office of Personnel Management may file a petition for reconsideration of a Board final order if he/she determines, in his/her discretion:

(1) That the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management, and

(2) That the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

(b) *Time limit.* The Director must file the petition for reconsideration within 30 days after the date of the Board's final order.

(c) *Briefs.* After the petition is filed, the Board will make the official record relating to the petition for reconsideration available to the Director for review. The Director's brief in support of the petition for reconsideration shall be filed 20 days after the record is made available for review. Any party's opposition to the petition for reconsideration shall be filed 25 days from the date of service of the Director's brief.

(d) *Stays.* Pursuant to a petition for reconsideration, the Director of OPM may apply to the Board for a stay of its final order. An application for a stay, with supporting memorandum, shall be filed at the same time as the petition for reconsideration.

§ 1201.119 Judicial review.

Any employee or applicant for employment adversely affected by a final order or decision of the Board under the provisions of 5 U.S.C. 7703 may obtain judicial review in the United States Court of Appeals for the Federal Circuit. Where judicial review is sought of discrimination issues in cases decided under 5 U.S.C. 7702, jurisdiction would lie with an appropriate United States district court, as provided herein under § 1201.173.

Subpart D—Hearing Procedures for Original Jurisdiction Cases

Actions Brought by the Special Counsel

§ 1201.121 Scope and compliance with Subpart B.

(a) *Scope.* The Board has original jurisdiction over actions brought by the Special Counsel and requests made by the Special Counsel for stays of certain personnel actions. The following sections of these regulations govern the proceedings concerning actions brought by the Special Counsel.

(b) *Compliance with Subpart B.* Except as otherwise expressly provided by this subpart, the Special Counsel shall comply with the regulations regarding hearing procedures set forth in Subpart B of this part in all complaints ro requests he/she files with the Board.

§ 1201.122 Filing and service in Special Counsel actions.

(a) *Initial filing.* The Special Counsel must file two copies of all complaints and requests, together with numbered and tabbed exhibits or attachments, if any, with the Clerk of the Board. *In addition,* a sufficient number of copies of complaints and requests, together with numbered and tabbed exhibits and a certified list of parties or their representatives and showing the last known address of each, shall be filed with the Office of the Clerk for service by the Board in accordance with subsection (b).

(b) *Service by the Board.* The Board will serve by mail copies of complaints and requests, together with exhibits or attachments, and a copy of the pertinent regulations of the Board, upon the parties to the proceeding or their representatives at the last known address as certified in accordance with subsection (a).

(c) *Subsequent filings and service.* Each party shall serve on every other party one copy of all pleadings, as defined by § 1201.4(c). 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.

§ 1201.123 Special Counsel complaints.

If the Special Counsel determines that any of the actions set out below should be taken, he/she shall file a written complaint setting forth with particularity the supporting facts and any alleged violations of law or regulation.

(a) Action to require an agency to take corrective action (5 U.S.C. 1206(c)(1)(B));

(b) Action to correct a pattern of prohibited personnel practices not otherwise appealable to the Board (5 U.S.C. 1206(h));

(c) Action to discipline an employee (5 U.S.C. 1206(g)); and

(d) Action to discipline an employee under the Federal Employees Flexible and Compressed Work Schedule Act (5 U.S.C. 6101 note).

The Board may order the Special Counsel and the responding party to file briefs and/or memoranda in any action the Special Counsel may bring before the Board.

§ 1201.124 Rights of employees.

When the Special Counsel files a complaint proposing a disciplinary action against an employee under 5 U.S.C. 1206(g), the affected employee shall have the right:

(a) To file an answer, supported by affidavits and documentary evidence;

(b) To be represented;

(c) To a hearing on the record before the Board or an administrative law judge;

(d) To a written decision by the Board, setting forth the reasons for its conclusion, issued at the earliest practicable date; and

(e) A copy of any final order imposing disciplinary actions.

§ 1201.125 Answer.

(a) *Filing and default:* A party named in a Special Counsel complaint shall file an answer with the Clerk of the Board within 35 days of the date of service of the complaint. In the absence of good cause shown, a party failing to answer waives the right to contest the allegations in the complaint. Unanswered allegations shall be considered admitted and shall form the basis of an initial or final decision as appropriate.

(b) *Content:* An answer shall contain a specific denial, admission or explanation of each fact alleged in the complaint. If the respondent is without knowledge of a fact, he/she shall so state. Statements of fact and appropriate documentation may be included to support each denial or defense. Allegations unanswered or admitted in the answer shall be considered true and may not be denied later.

§ 1201.126 Final orders of the Board.

(a) In any action seeking correction of a prohibited personnel practice, the Board may order such corrective actions as it considers appropriate after providing an opportunity for comment by the agency and OPM (5 U.S.C. 1206(c)(1)(B)).

(b) In any action seeking correction of a pattern of prohibited personnel practices not otherwise appealable to the Board, the Board may order an agency or employee to take whatever measures the Board may determine to

be necessary or appropriate (5 U.S.C. 1206(h)).

(c) In any action to discipline an employee except as provided in paragraphs (e) and (f) of this section, the Board may order a removal, reduction in grade, debarment (not to exceed five years), suspension, reprimand, or an assessment of civil penalty not to exceed $1,000 (5 U.S.C. 1207).

(d) In any action seeking the withholding of Federal funds under 5 U.S.C. 1506(a)(2) in which a State or local employee has engaged in prohibited political activities, the Board may order the Federal agency administering loans or grants to a State or local agency that reappoints the offending employee within a period of 18 months to withhold a sum not to exceed two years' pay of the offending employee at the rate he/she was receiving at the time of the violation.

(e) In any action to discipline an employee under the Federal Employees Flexible and Compressed Work Schedule Act, 5 U.S.C. 6101 note, a final order of the Board may impose disciplinary action consisting of:

(1) Removal from Federal employment for any period of time the Board may prescribe;

(2) Suspension; or

(3) Such other disciplines the Board shall deem appropriate.

(f) In any action to discipline an employee for violation of 5 U.S.C. 7324, the Board shall order the employee's removal, unless it finds by unanimous vote that the violation does not warrant removal and imposes instead a penalty of not less than 30 days' suspension without pay.

§ 1201.127 Request for stay.

Under 5 U.S.C. 1208, the Special Counsel may request a Member of the Board to stay any personnel action if he/she determines that there are reasonable grounds to believe that the action was or is about to be taken as a result of a prohibited personnel practice.

(a) *Content of request.* Each request must be signed by the Special 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; and

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

(b) *Filing and serving of request.* The request for stay shall be filed and served on all parties in accordance with § 1201.122.

(c) *Action on the request for stay.*—(1) *Initial stay.* Within three calendar days after the filing of a request, excluding Saturdays, Sundays and legal holidays, any Member of the Board shall grant a request for a stay of 15 calendar days under 5 U.S.C. 1208(a)(1) unless the Member determines that, under the facts and circumstances, the requested stay would not be appropriate. Unless denied within the three-day period, the stay shall be considered granted by operation of law.

(2) *Extension of initial stay.* Upon request filed by the Special Counsel, any Member of the Board may extend the period of any stay ordered under 5 U.S.C. 1208(a) for a period of not more than 30 days. If the agency involved files with the Board its written views on the granting of the extension of a stay under this provision, the Board, in its discretion, may consider them.

(3) *Indefinite stay.* Upon request of the Special Counsel, the Board may extend any stay granted under 5 U.S.C. 1208(a) for whatever time it considers appropriate, but only after providing to the Special Counsel and the agency an opportunity to comment, and after the Board has concurred in the request of the Special Counsel. Simultaneously with filing a request for an extension of stay under 5 U.S.C. 1208(c), the Special Counsel shall file a brief setting forth the facts and any relevant legal authority that the Board should consider in reaching its determination. The agency shall respond in accordance with any order of the Board.

(d) *Additional information.* At any time, the Board, or a Member of the Board, where appropriate, may require the Special 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.

§ 1201.128 Administrative appeal, judicial review.

No administrative appeal lies from an order of the Board. An employee subject to a final order imposing disciplinary action under 5 U.S.C. 1207 may obtain judicial review of the order of the Board in an appropriate United States Court of Appeals (5 U.S.C. 1207(c)).

§ 1201.129 Special Counsel actions.

(a) Unless specifically reserved for hearing by the Board, an action brought by the Special Counsel (excepting requests for stays under section 1208) shall be heard by an administrative law judge who shall issue a recommended decision to the Board in accordance with 5 U.S.C. 557. All pleadings in such actions shall be filed with the Clerk of the Board.

(b) The parties may file with the Clerk of the Board any exceptions they may have to the recommended decision of the administrative law judge within 35 days after the date of service of the recommended decision.

(c) The parties may file replies to exceptions within 25 days from the date of service of the exceptions, as determined by the certificate of service.

Actions Against Administrative Law Judges

§ 1201.131 Procedures.

When an agency proposes an action against an administrative law judge, the hearing shall be governed by the procedures established under Subpart B, unless these regulations expressly provide otherwise. However, filing and service of initial and subsequent pleadings shall be made in accordance with § 1201.122 of this subpart.

§ 1201.132 Board jurisdiction.

Under this section, the jurisdiction of the Board is limited to proposed action involving:

(a) A removal;

(b) A suspension;

(c) A reduction in grade;

(d) A reduction in pay; and

(e) A furlough of 30 days or less.

§ 1201.133 Filing of complaint.

To initiate an action against an administrative law judge, an agency shall file a complaint with the Board setting forth with particularity the facts that support the proposed action.

§ 1201.134 Procedure.

The administrative law judge against whom the complaint is filed may file an answer to the complaint in compliance with § 1201.125 of this subpart.

§ 1201.135 Presiding official.

(a) Unless specifically reserved for hearing by the Board, an action by an employing agency against an administrative law judge shall be heard by an administrative law judge who shall issue a recommended decision in accordance with 5 U.S.C. 557. All pleadings in such actions shall be filed with the Clerk of the Board.

(b) The parties may file with the Office of the Clerk of the Board any exceptions they may have to the recommended decision of the administrative law judge within 35 days

from the date of issuance of the administrative law judge's recommended decision.

(c) The parties may file replies to exceptions within 25 days from the date of service of the exceptions, as determined by the certificate of service.

§ 1201.136 Showing required.

The Board will authorize the agency to take a disciplinary action and will specify the Board's choice of penalty only after the Board has made a finding of good cause as required by 5 U.S.C. 7521.

Removal From the Senior Executive Service

§ 1201.141 Right to hearing.

In the case of a proposed action under 5 CFR 359.502 to remove a career appointee from the Senior Executive Service to another civil service position, the appointee, upon request filed at least 15 days before the effective date of the removal, shall be granted an informal hearing before an official appointed by the Board.

§ 1201.142 Hearing procedures; referral of the record.

The appointee and/or his/her representative may appear and present arguments in an informal hearing before the Board or its designee and a verbatim record shall be made of the proceeding. The appointee is not entitled to any other procedural rights before the Board. However, the Board will refer a copy of the record to the Special Counsel, the Office of Personnel Management and the employing agency for whatever action may be appropriate.

§ 1201.143 Right to appeal.

There is no right to appeal under 5 U.S.C. 7703. The removal action shall not be delayed as a result of the hearing.

Subpart E—Procedures for Cases Involving Allegations of Discrimination

§ 1201.151 Scope and policy.

(a) *Scope.* (1) The rules in this subpart implement 5 U.S.C. 7702, and apply in any case where an employee or applicant for employment alleges that a personnel action appealable to the Board was taken, in whole or in part, on the basis of prohibited discrimination.

(2) "Prohibited discrimination" as used in this subpart means discrimination prohibited by:

(i) Section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16(a));

(ii) Section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d));

(iii) Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791);

(iv) Sections 12 and 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 631, 633a); or

(v) Any rule, regulation or policy directive prescribed under any provision of law described in paragraph (a)(2) (i) through (iv) of this section.

(b) *Policy.* It is the policy of the Board to adjudicate impartially, thoroughly and fairly all issues raised under this subpart in the course of an action brought before the Board. In doing so the Board will allow appellants an opportunity to raise allegations of discrimination during the appeals process and to fully present evidence in support of the charges raised.

§ 1201.152 Compliance with procedures under Subpart B.

Except as otherwise expressly provided by this subpart, all actions involving allegations of prohibited discrimination shall comply with the regulations regarding hearing procedures set forth in Subpart B of this part.

§ 1201.153 Contents of petition.

(a) *Contents.* A petition for appeal raising issues of prohibited discrimination under this subpart shall comply with the provisions of § 1201.24 of Subpart A with the following exceptions:

(1) The petition shall state that there was discrimination in conjunction with the matter appealed and provide specific examples of how the appellant was discriminated against; and

(2) The petition shall state whether the appellant has filed a discrimination complaint or grievance with his/her agency or any other agency, the date of filing such compliant or grievance, and any action taken.

(b) *Use of form.* Completion of the form in Appendix I to these regulations, including questions 24 and 25, shall constitute compliance with the provisions of paragraph (a) of this section.

§ 1201.154 Time for filing petition.

Following are the requirements for filing a petition raising issues of prohibited discrimination in connection with a matter otherwise appealable to the Board:

(a) Where the appellant has filed a timely formal complaint of discrimination with the agency:

(1) A petition must be filed within 20 days after receipt of the agency resolution or final decision on the discrimination issue; or

(2) When the agency has not resolved the matter or issued a final decision on the formal compliant within 120 days, the appellant may appeal the matter directly to the Board at any time after the expiration of 120 calendar days.

(b) Where the appellant has filed a grievance with the agency under its negotiated grievance procedure pursuant to 5 U.S.C. 7121, the employee may request the Board to review the final decision under 5 U.S.C. 7702 within 20 days after receipt of the final decision. The request must be filed with the Clerk of the Board, Merit Systems Protection Board, Washington, DC 20419. The request for review shall contain:

(1) A statement of the grounds on which review is requested;

(2) Evidence of record or rulings bearing on the issues before the Board;

(3) Arguments in support of the stated grounds with specific reference to the pertinent documents and citations of authority; and

(4) A legible copy of the final decision and other pertinent documents which may include a transcript or hearing tape recording.

(c) Where the appellant has been subject to an action appealable to the Board, he/she must either file a timely compliant of discrimination with the agency or appeal to the Board within 20 days after the effective date of the agency action being appealed.

(d) Where the appellant has filed an appeal prematurely under this subpart, the presiding official shall dismiss the appeal without prejudice to be later refiled under §§ 1201.12 and 1201.22(b). Where holding the petition for a short period of time would allow it to become timely, the presiding official in his/her discretion may hold the petition rather than dismiss it to be refiled.

§ 1201.155 Allegations of discrimination not raised in petition.

(a) *Timeliness.* An appellant may raise an allegation of discrimination at any time during the Board's consideration of the appeal of the agency's action, if the appellant did not know of the existence of a basis for the allegation at the time the petition for appeal was filed. The issue of discrimination may be excluded from consideration only upon a showing by the agency that to consider the issue would prejudice the rights of the agency and unduly delay the proceedings or that the discrimination issue is not directly related to the matter being appealed. If the issue of discrimination is excluded from consideration in the appeal, it shall be remanded to the

agency for appropriate consideration under any applicable law or regulation.

(b) *Effect.* When an appellant raises an allegation of prohibited discrimination which was not previously raised before the agency, the presiding official should use his/her authority under § 1201.41 of these regulations, particularly paragraph (b)(9) of § 1201.41, to develop the record sufficiently to make a determination on the merits of the allegation. In developing the record in these circumstances, the time limits that are imposed on the production of evidence and filing of memoranda may reasonably be expected to be much more constricted than those imposed in a 5 U.S.C. 7701 appeal in order to meet the statutory 120-day processing requirement.

(c) *Remand.* In the event the parties agree in writing and file for the record a statement that a remand to the agency is desirable, the presiding official may remand the discrimination issue to the agency for consideration, if the presiding official determines to do so would be in the interests of justice. If the issue is remanded to the agency, the remand order shall contain a time period within which the agency action must be completed, but in no instance shall that time period exceed 120 days. During this time the Board will retain jurisdiction and the appeal shall be held in abeyance. Thereafter the actions shall be merged and processed and a decision issued within 120 days.

(d) *Agency answer.* When an appellant alleges prohibited discrimination for the first time during the course of a proceeding, and the matter is not remanded to the agency, the agency shall be given a reasonable opportunity to refute the allegation through a responsive pleading, testimony, production of documents or as otherwise permitted by the presiding official.

§ 1201.156 Time for processing appeals involving allegations of discrimination.

(a) *Issue raised in petition.* When an appellant alleges prohibited discrimination in the petition for appeal, the Board shall decide both the issue of discrimination and the appealable action within 120 days of the filing of the appeal.

(b) *Issue not raised in petition.* When an appellant has not alleged prohibited discrimination in the petition for appeal, but has raised the issue subsequently in the proceeding, the Board shall decide both the issue of discrimination and the appealable action within 120 days after the issue is raised.

(c) *Discrimination issue remanded to agency.* When an issue of discrimination is remanded to the agency, processing shall be completed within 120 days after the agency action is completed and the case returned to the Board.

§ 1201.157 Presiding official.

In an appeal from a final decision or order under 5 U.S.C. 7121 or 7122 issued by the arbitrator or the Federal Labor Relations Authority the presiding official shall be an administrative law judge, the Board, a Member of the Board, or other person designated by the Board to hear the case.

§ 1201.158 Final decision, notice of judicial review.

Any final decision of the Board under 5 U.S.C. 7702 shall notify the appellant of his/her right, within 30 days of the receipt of the Board's final decision, to petition the Equal Employment Opportunity Commission ("the Commission") to consider the Board's decision, or to file a civil action in an appropriate United States district court.

Review of Board Decision

§ 1201.161 Action by the Commission, finality and judicial review.

(a) *Time limit for determination.* In cases where an appellant petitions the Commission for consideration of the Board's decision under 5 U.S.C. 7702(b)(2), the Commission shall determine, within 30 days after the date of petition, whether to consider the decision.

(b) *Judicial review.* The Board's decision shall become judicially reviewable as of:

(1) The date of issuance of the decision if the appellant does not file a petition with the EEOC under 5 U.S.C. 7702(b)(1); or

(2) The date of the Commission's determination not to consider the petition filed under 5 U.S.C. 7702(b)(2).

(c) *Commission processing and time limits.* Where the Commission determines to consider the decision of the Board, within 60 days after making such determination it shall complete its consideration and either:

(1) Concur in the decision of the Board; or

(2) Issue in writing and forward to the Board for its action under § 1201.162 of this subpart another decision which differs from the decision of the Board to the extent that the Commission finds that, as a matter of law:

(i) The decision of the Board constitutes an incorrect interpretation of any provision of any law, rule, regulation, or policy directive relating to prohibited discrimination; or

(ii) The decison involving such provision is not supported by the evidence in the record as a whole.

(d) *Transmittal of record.* The Board shall transmit a copy of its record to the Commission upon request.

(e) *Development of additional evidence.* When requested by the Commission, the Board shall develop additional evidence necessary to supplement the record within a period sufficient to permit the Commission to make its decision within the statutory 60-day time limit referred to in paragraph (c) of this section. In such event the Board may be required to schedule additional proceedings to enable it to comply with such a Commission request.

(f) *Commission concurrence in Board decision; timing of judicial review.* If the Commission concurs in the decision of the Board under 5 U.S.C. 7702(b)(3)(A), the decision of the Board may be appealed to the appropriate United States district court.

§ 1201.162 Board action of the Commission decision.

(a) *Board decision.* Within 30 days after receipt of a decision of the Commission issued under § 1201.161(c)(2), the Board shall consider the decision and:

(1) Concur and adopt in whole the decision of the Commission; or

(2) To the extent that the Board finds that, as a matter of law;

(i) The Commission decision constitutes an incorrect interpretation of any provision of any civil service law, rule, regulation, policy directive; or

(ii) The Commission decision involving such provision is not supported by the evidence in the record as a whole, it may:

(A) Reaffirm the decision of the Board; or

(B) Reaffirm the decision of the Board with such revisions as it determines appropriate.

(b) *Judicial review.* If the Board concurs in or adopts the decision of the Commission under paragraph (a)(1) of this section, the decision of the Board shall be a judicially reviewable action.

§ 1201.165 Mixed cases governed by Reorganization Plan No. 1 of 1978.

(a) *Definitions.*—(1) *Prohibited discrimination* as used in this section means discrimination prohibited by section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16(c)); section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791); and sections 12 and 15 of the Age

Discrimination in Employment Act of 1967, as amended (29 U.S.C. 631, 633a).

(2) *Initial decision* as used in this section means a decision rendered by a presiding official of the MSPB pursuant to 29 CFR 1613 or 5 CFR Part 772 (as in effect prior to January 11, 1979) on an appeal in which issues of prohibited discrimination have been raised.

(3) *Preliminary decision as used in this section means:*

(i) An initial decision within the meaning of § 1201.165(a)(2) which has not been reopened by a Board member or as to which no petition to reopen was filed by a party within 35 days after issuance of the decision;

(ii) A decision by the Board itself pursuant to 29 CFR Part 1613 or 5 CFR Part 772, in which issues of prohibited discrimination are addressed, or a decision by the Board denying all petitions to reopen.

(b) *Contents of petition.* A petition for appeal raising issues of prohibited discrimination shall state there was discrimination in conjunction with the matter appealed and provide specific examples of how the applicant was discriminated against.

(c) *Procedures.* (1) Appeals under 29 CFR Part 1613 (formerly 5 CFR Part 713) shall be processed by the Board consistent with the provisions set forth in that part. Such appeals shall be filed in writing with the appropriate Board Regional Office.

(2) Appeals under the provisions of 5 CFR Part 772 shall be processed as provided therein, except that under 5 CFR 772.306(b) the discrimination investigation shall be complete and the investigative file and report sent to the Board within 120 days. Except when this time has been extended upon a verified showing of good cause, the Board may impose the sanctions provided in 5 CFR 1201.43 if an agency fails to timely complete and file the result of such an investigation.

(3) An initial decision on an appeal which includes issues of prohibited personnel discrimination shall be rendered by an employee of the Board, pursuant to 29 CFR 1613 or 5 CFR Part 772, on all issues raised in the appeal.

(4) Unless a petition to reopen is filed with the Board or unless a Board member reopens on his/her own motion, within 35 days from issuance of an initial decision, the initial decision shall become the preliminary decision of the Board.

(d) *Review by EEOC.*—(1) *Time for filing.* A petition to review the preliminary decision of the Board on issues of prohibited discrimination shall be filed with the EEOC within 35 days after the initial decision of the Board becomes the preliminary decision.

(2) *Petition filed.* In the event a petition for review is filed with the EEOC, the Board decision shall become final on all issues, other than issues of prohibited discrimination, on the date EEOC's decision on these issues becomes final.

(3) *Petition not filed.* If a petition for review is not filed with the EEOC, the decision of the Board shall become final on all issues. (5 U.S.C. 1205(g)).

Special Panel

§ 1201.171 Referral of case to Special Panel.

If the Board reaffirms its decision under 5 CFR 1201.162(a)(2) with or without modification, the matter shall be immediately certified to the Special Panel established pursuant to 5 U.S.C. 7702(d). Upon certification, the Board shall, within five days (excluding Saturdays, Sundays, and Federal holidays), transmit to the Chairman of the Special Panel and to the Equal Employment Opportunity Commission (EEOC) the administrative record in the proceeding including—

(a) The factual record compiled under this section which shall include a transcript of any hearing(s);

(b) The decisions issued by the Board and the Commission under 5 U.S.C. 7702; and

(c) A transcript of oral arguments made, or legal brief(s) filed, before the Board and/or the Commission.

§ 1201.172 Organization of the Special Panel.

(a) The Special Panel is composed of—

(1) A Chairman appointed by the President with the advice and consent of the Senate, and whose term is six (6) years;

(2) One member of the MSPB, designated by the Chairman of the Board each time a panel is convened;

(3) One member of the EEOC designated by the Chairman of the Commission each time a panel is convened.

(b) *Designation of Special Panel member.*—(1) *Time of designation.* Within five (5) days of certification of the case to the Special Panel, the Chairman of the MSPB and the Chairman of the EEOC shall each designate one member from their respective agencies to serve on the Special Panel.

(2) *Manner of designation.* Letters of designation shall be served on the Chairman of the Special Panel and the parties to the appeal.

§ 1201.173 Practices and procedures of the Special Panel.

(a) *Scope.* The rules in this subpart apply to proceedings before the Special Panel.

(b) *Suspension of rules.* In the interest of expediting a decision, or for good cause shown, the Chairman of the Special Panel may, except where the rule is required by statute, suspend these rules on application of a party, or on his or her own motion, and may order proceedings in accordance with his or her direction.

(c) *Time limit for proceedings.* Pursuant to 5 U.S.C. 7702(d)(2)(A), the Special Panel shall issue a decision within 45 days after a matter has been certified to it.

(d) *Administrative assistance to Special Panel.*

(1) The MSPB and the EEOC shall provide the Panel with such reasonable and necessary administrative resources as determined by the Chairman of the Special Panel.

(2) Assistance shall include, but is not limited to, processing vouchers for pay and travel expenses.

(3) The Board and EEOC shall be responsible for all administrative costs incurred by the Special Panel and, to the extent practicable, shall equally divide the costs of providing such administrative assistance. The Chairman of the Special Panel shall resolve the manner in which costs are divided in the event of a disagreement between the Board and the EEOC.

(e) *Maintenance of the official record.* The Board shall maintain the official record. The Board shall transmit two copies of each submission filed to each member of the Special Panel in an expeditious manner.

(f) *Filing and service of pleadings.* (1) The parties shall file the original and six copies of all submissions with the Clerk, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419. One copy of each submission shall be served on the other parties.

(2) A certificate of service specifying how and when service was made must accompany all submissions of the parties.

(3) Service may be by mail or by personal delivery during normal business hours (8:14 a.m.–4:45 p.m.). Due to the short statutory time limit, parties are required to file their submissions by overnight Express Mail, provided by the U.S. Postal Service, should they file by mail.

(4) The date of filing shall be determined by the date of mailing as indicated by the order date for Express Mail. If the filing is by personnel

delivery, it shall be considered filed on the date it is received in the office of the Clerk, Merit Systems Protection Board.

(g) *Briefs and responsive pleadings.* If the parties wish to submit written argument, briefs shall be filed with the Special Panel within fifteen (15) days from the date of the Board's certification order. Due to the short statutory time limit, responsive pleadings will not ordinarily be permitted.

(h) *Oral argument.* The parties have the right to oral argument if desired. Parties wishing to exercise this right shall so indicate at the time of filing their brief, or if no brief is filed, within fifteen (15) days from the date of the Board's certification order. Upon receipt of a request for argument, the Chairman of the Special Panel shall determine the time and place for argument and the time to be allowed each side, and shall so notify the parties.

(i) *Postargument submissions.* Due to the short statutory time limit, no postargument submissions will be permitted, except by order of the Chairman of the Special Panel.

(j) *Procedural matters.* Any procedural matters not addressed in these regulations shall be resolved by written order of the Chairman of the Special Panel.

§ 1201.174 Enforcement of Special Panel decision.

The Board shall, upon receipt of the decision of the Special Panel, order the agency concerned to take any action appropriate to carry out the decision of the Panel. The Board's regulations regarding enforcement of a final order of the Board shall apply. These regulations are set out at 5 CFR Part 1201, Subpart F.

§ 1201.175 Judicial review of cases decided under 5 U.S.C. § 1702.

(a) *Place and type of review.* All judicial review from cases decided under 5 U.S.C. 7702 is in the appropriate United States district court, including: an action pursuant to the provisions of section 717(c) of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16(c)); section 15(c) of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 633a(c)); and section 15(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216(b)).

(b) *Time for filing.* Notwithstanding any other provision of law, all cases decided under 5 U.S.C. 7702 must be filed within 30 days after the individual received notice of the judicially reviewable action.

Supbart F—Enforcement of Final Decision

§ 1201.181 Authority and explanation.

(a) Pursuant to 5 U.S.C. 1205(a)(2), the Board has the authority to order any Federal agency or employee to comply with decisions and orders issued under its jurisdiction. The Board also has the authority and duty to enforce compliance with its orders and decisions and will do so when necessary as described in this subpart. The parties are expected to cooperate fully with each other so that compliance with the Board's orders and decisions can be accomplished promptly and in accord with laws, rules, and regulations applicable to the individual case. The Board's decisions and orders shall contain a notice of the Board's enforcement authority.

(b) In order to avoid unnecessary petitions under this subpart, the agency shall promptly communicate with the appellant its actions to comply, and shall advise the appellant when it considers compliance to have been accomplished. The appellant must provide all necessary information requested by the agency in furtherance of compliance and should, from time to time, inquire as to the agency's progress, if not otherwise notified.

§ 1201.182 Petition for enforcement.

(a) *Appellate jurisdiction.* Any party may petition the Board for enforcement of a final decision issued under the Board's appellate jurisdiction. The petition shall be filed promptly with the regional office which issued the initial decision, shall be served on the agency representative, and shall set forth specifically the reasons why the petitioning party believes there is noncompliance. The date and results of any communications with respect to compliance should be stated. Any petition for enforcement filed more than 30 days after the date of service of the agency's notice that compliance has been accomplished shall contain a statement and evidence showing good cause for the delay and a request for an extension of time to file.

(b) *Original jurisdiction.* Any party seeking enforcement of a Board order issued under its original jurisdiction shall file a petition for enforcement with the Clerk of the Board and shall serve a copy on the agency. The petition shall set forth specifically the reasons why the petitioning party believes there is noncompliance. The petition will be processed under the procedures set forth in § 1201.183 of this subpart.

§ 120.1183 Enforcement action by the Board.

(a) *Initial Processing.* (1) When a petition has been filed for enforcement of a final decision, the agency respondent must file within 15 days of the date of service of the petition: evidence of compliance; a statement of actions completed, actions in process, and actions remaining and a reasonable schedule for full compliance; or otherwise show good cause why there was noncompliance or compliance is incomplete. The appellant will have 10 days from the date of service of the agency's reply in which to file a response to the agency submission. The parties are required to serve each other as required under § 1201.26(b)(2).

(2) A hearing may be convened when necessary to resolve matters at issue.

(3) If the Regional Director or designated presiding official, as appropriate, finds that the agency has taken or made a good faith effort to take all actions required to be in compliance with the final decision, he/she will state those findings in a *Decision*, which will be subject to the procedures for petitions for review by the Board pursuant to Subpart C of this Part and subject to judicial review pursuant to § 1201.119.

(4) If the Regional Director or designated presiding official, as appropriate, finds that:

(i) The agency has not taken or made a good faith effort to take any action required to be in compliance with the final decision; or

(ii) The agency has taken or made a good faith effort to take one or more, but not all, actions required to be in compliance with the final decisions; he/she will issue a *Recommendation* containing his/her findings, a statement of the actions required by the agency to be in compliance with the final decision, and a recommendation that the Board enforce the final decision.

(5) If a *Recommendation* is issued, the agency must do one of the following:

(i) If the agency decides to take the actions required by the *Recommendation*, the agency must, within 15 days from the issuance of the Recommendation, submit to the Clerk of the Board evidence that it has taken those actions; or

(ii) If the agency decides not to take any of the actions required by the *Recommendation*, the agency must file a brief supporting its disagreement with the *Recommendation*. The brief must identify by name, title, and grade the agency official responsible for the failure to take the actions required by the *Recommendation* for compliance

and must be filed with the Clerk of the Board within thirty (30) days from issuance of the *Recommendation;* or

(iii) If the agency decides to take one or more, but not all, actions required by the *Recommendation,* the agency must submit both evidence of the actions it has taken and a brief supporting its disagreement with the *Recommendation* as to the actions which it has not taken. The brief must contain the identifying information required by § 1201.183 (a)(5)(ii). The evidence and brief must be filed with the Clerk of the Board within thirty (30) days from issuance of the *Recommendation.*

(6) The appellant or petitioner may file a brief which responds to the agency's submission under § 1201.183(a)(5) and which requests the Board to review any finding in the *Recommendation* made under § 1201.183(a)(4)(ii) that the agency is in partial compliance with the final decision. The brief must be filed with the Clerk of the Board within twenty (20) days of the date of service of the agency's submission under § 1201.183(a)(5).

(b) *Referral to the Board.* (1) The *Recommendation* will be promptly considered along with the submissions of the parties. Where appropriate, the Board may require the respondent agency official or his/her representative to appear before the Board and/or to respond in writing to show cause why sanctions pursuant to 5 U.S.C. 1205 (a)(2) and (d)(2) should not be imposed against the person responsible for the agency's failure to comply.

(2) The Board may hold a hearing on an order to show cause, or it may issue a decision without a hearing.

(3) The Board's final decision on the issues of compliance is subject to judicial review pursuant to § 1201.119.

(c) *Certification to the Comptroller General.* Where appropriate, the Board may, under 5 U.S.C. 1205(d)(2), certify to the Comptroller General of the United States that no payment shall be made to any Federal employee found to be in noncompliance with the Board's order other than a Presidential appointee subject to conformation by the Senate.

(d) *Effect of Special Counsel's action or failure to act.* No proceeding under this subpart shall be precluded because the Special Counsel did not file a complaint under 5 U.S.C. 1206(g)(1)(B) and Subpart D of this part.

Subpart G—Saving Provisions

§ 1201.191 Saving provisions.

(a) *Scope.* All executive orders, rules and regulations relating to the Federal service that were in effect prior to the effective date of the Civil Service Reform Act shall continue in effect and be applied by the Board in its adjudications until modified, terminated, superseded, or repealed by the President, Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority, as appropriate.

(b) *Administrative proceedings and appeals therefrom.* No provision of the Civil Service Reform Act shall be applied by the Board in such a way as to affect any administrative proceeding pending at the effective date of such provision. "Pending" is considered to encompass existing agency proceedings, and appeals before the Board or its predecessor agencies, that were subject to judicial review or under judicial review on January 11, 1979, the date on which the Act became effective. An agency proceeding is considered to exist once the employee has received notice of the proposed action.

(c) *Explanation.* Mr. X was advised of agency Y's intention to remove him for abandonment of position, effective December 29, 1978. Twenty days later Mr. X appealed the agency action to the Merit Systems Protection Board. The Merit Systems Protection Board docketed Mr. X's appeal as an "old system case," *i.e.,* one to which the savings clause applied. The appropriate regional office processed the case, applying the substantive laws, rules, and regulations in existence prior to the enactment of Act. The decision, dated February 28, 1979, informed Mr. X that he is entitled to judicial review if he files a timely notice of appeal in the appropriate United States district court or the United States Court under the statute of limitations applicable when the adverse action was taken.

Subpart H—Voluntary Expedited Appeals Procedure

General

§ 1201.200 Scope and policy.

The rules in this subpart apply to the voluntary expedited appeals procedure (VEAP), of the Board. It is the objective of the Board to establish a simplified alternative dispute resolution procedure which will provide employees and agencies with a faster, less costly process than Subpart B procedures to resolve appealed actions, while also assuring an impartial third-party forum with full concern for fairness and the rights of all parties.

Election of and Filing for Voluntary Expedited Appeals Procedure

§ 1201.201 Election of voluntary expedited appeals procedure.

(a) The appellant may request that his/her case be processed under the voluntary expedited appeals procedure at the time of filing a petition for appeal. In the event the appellant has failed to elect or decline VEAP at the time of filing, appellant may be allowed 10 days from the date of the Board's acknowledgment order to elect VEAP. Such election must be in writing. The date of filing shall be determined by the date of mailing indicated by the postmark date.

(b) If an appellant elects VEAP in the petition for appeal, notice of that election will be served on the agency in the Board's order of acknowledgment. If an appellant elects VEAP during the 10-day period following the acknowledgment order, the appellant shall serve notice upon the Board and the agency of that election. Within 15 days from the date of service of the apppellant's election, the agency will file either a consent to use the voluntary expedited procedure and a designation of representative form or a declination. Included in the consent will be a brief summary of facts and legal issues raised in the appeal. In the event the agency declines to use the expedited procedure, it must timely file its response to the petition for appeal in accordance with § 1201.25 and note its declination of the procedure.

(c) The Regional Director, or designee, of the MSPB office having jurisdiction over the appeal retains final discretion to process the case under the voluntary expedited appeals procedure or the formal Board procedure. Such decision will be made after receipt of the agency's consent and summary of the case. The Regional Director, or designee, also retains the right to convert the case to adjudication under Subpart B procedures in the event circumstances warrant, such as whenever it appears that discovery is required, novel questions of law are raised at the hearing or in briefs, or issues arise that do not lend themselves to resolution in an expedited procedure.

§ 1201.202 Filing of request for the voluntary expedited appeals procedure; contents; time limits.

(a) The filing, time limits and content requirements of a petition for appeal processed under this subpart shall comply with the provisions of §§ 1201.22–1201.26 of Subpart B, unless

these regulations expressly provide otherwise.

(b) Within 15 days from the date of the Board's order of acknowledgment, the agency will file a designation of representative and consent form, including a summary of facts and legal issues raised in the case, or a declination to use the procedure.

§ 1201.203 Joint appeals record.

(a) Within 30 days from the date of the Board's order of acknowledgment, the parties will file a Joint Appeals Record including, but not limited to:

(1) Each party's statement of issues;

(2) Each party's statement of position with respect to those issues, limited to three pages;

(3) Requests for hearing;

(4) Two dates, mutually agreed upon by the parties for the hearing, which are no later than 15 days beyond the day the Joint Appeals Record is to be filed with the Regional Office.

(5) Witness lists, including a statement of the anticipated testimony of each witness;

(6) Any objections to the appearance of any witness requested by the opposing party; and

(7) The agency response required by § 1201.25.

(b) The parties must submit all known, relevant and material documents and evidence in the Joint Appeals Record.

§ 1201.204 Procedures for cases involving allegations of discrimination.

The provisions for the processing of cases involving discrimination are not abridged by the use of the voluntary expedited appeals procedure. Section 1201.152, however, does not apply to the adjudication of cases involving allegations of discrimination if they are processed under VEAP.

Presiding Official and Hearing

§ 1201.205 Selection and authority of presiding official.

(a) The regional director will appoint the presiding official taking due account of scheduling difficulties, workload requirements or conflicts of interest.

(b) The presiding official shall have the authority to rule on parties' procedural requests. However, the presiding official shall issue the expedited initial decision no later than 60 days from the date of the Board's order of acknowledgment.

(c) The presiding official shall have the authority to take all necessary action to avoid delay in the disposition of the proceeding and to conduct a fair and impartial hearing including the authority to regulate the hearing, maintain decorum and exclude from the hearing any disruptive person.

(d) Unless these regulations expressly provide otherwise, the presiding official will follow the regulations under 5 CFR Part 1201, Subpart B.

§ 1201.206 Hearing.

(a) If the appellant requests a hearing, or if the presiding official approves any agency request for a hearing, the hearing will be scheduled no later than 15 days following the due date or receipt of the Joint Appeals Record, whichever is earlier.

(b) The hearing will be informal. Election of VEAP consititutes a waiver by the parties of a verbatim record.

(c) The hearing will be held at the employment site.

Parties and Witnesses

§ 1201.207 Federal Witnesses.

Every Federal agency or corporation shall make its employees or personnel available to furnish sworn statements or to appear as witnesses at the hearing when ordered by the presiding offical. Witnesses are on offical duty status when providing such statements or testimony.

§ 1201.208 Intervenors.

(a) The Director of the Office of Personnel Management may intervene as a matter of right pursuant to 5 U.S.C. 7701(d)(1). Such intervention shall be made at the earliest practicable time.

(b) The Special Counsel may intervene as a matter of right pursuant to 5 U.S.C. 1206(i). Such intervention shall be made at the earliest practicable time.

Evidence

§ 1201.209 Service of documents.

Any document submitted to the presiding offical shall be served upon all parties to the proceedings.

§ 1201.210 Admissibility.

Formal rules as to admissibility of evidence will not be applied although they will be used as guidance for the conduct of the proceeding. Rules of procedure shall be liberally construed to facilitate full and frank disclosure by both parties. Parties have the duty of including all known relevant documents in their submissions.

§ 1201.211 Production of evidence or witnesses by request of presiding official.

The presiding official may request the production of information, documents, or witnesses if he or she has a reasonable basis to believe that it will be germane to the case

§ 1201.212 Stipulations.

The parties may stipulate to any matter of fact, § 1201.213 Official notice.

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

Sanctions

§ 1201.214 Sanctions.

The Presiding official may impose sanction upon the parties as necessary to serve the ends of justice, including but not limited to the instances set forth in paragraphs (a), (b), and (c) of this section.

(a) *Failure to comply with an order.* If a party fails to comply with a presiding official's order for information or witnesses within the party's control which the presiding official believes to be necessary to resolve the issues, or a party fails to cooperate or act in good faith, the presiding official may:

(1) Draw an inference in favor of the requesting party with regard 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; or

(4) Strike any part of the pleading or other submissions of the party failing to comply with such request dealing with the subject matter of the request.

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

(c) *Failure to make timely filing.* The presiding official may refuse to consider any information which is not filed in a timely fashion in compliance with this subpart or with his or her request.

Hearing Procedure; Settlement; Expedited Initial Decision

§ 1201.215 Burden of proof.

Section 1201.56 of Subpart B applies.

§ 1201.216 Closing the record.

(a) When a hearing is convened, the record will close at the conclusion of the hearing unless otherwise specified by the presiding official.

(b) When a hearing is not convened, the record will close on the date set by the presiding official as the final date for the receipt of submissions of the parties.

(c) In any event, the record will be closed no later than 15 days from the due date of the Joint Appeals Record.

(d) Once the record is closed, no additional evidence or argument shall be considered except upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record.

§ 1201.217 Settlement.

(a) *Settlement discussion.* Informal settlement of the dispute will be raised by the presiding official with the parties prior to the hearing or, if no hearing is requested, within 15 days after the filing of the Joint Appeals Record. Prohibitions against ex parte communications during settlement discussions will be waived by the parties. If either party does not wish to discuss settlement or the matter cannot be settled informally, the presiding official will proceed with the adjudication of the case. At any time until the issuance of an expedited initial decision the parties may enter into a settlement agreement.

(b) *Agreement.* If the parties agree to resolve the dispute without a decision on the merits of the case, upon notification to the presiding official, the settlement agreement will be the final and binding resolution of the appeal and the presiding official will dismiss the appeal with prejudice.

(1) If the agreement is offered into the record by the parties and reviewed by the presiding official for legality and lack of fraud, it will be made a part of the record, and the Board will retain jurisdiction to ensure compliance with the agreement;

(2) If the agreement is not entered into the record, the Board will not retain jurisdiction to ensure compliance.

§ 1201.218 Expedited initial decision.

(a) If settlement is not reached, the presiding official will adjudicate the appeal and issue a written decision within 15 days after the record is closed but no later than 60 days from the date of the Board's order of acknowledgment. The decision will include a summary of the basic issues, findings of fact and conclusions of law, a holding affirming, reversing or modifying the appealed action and order appropriate relief.

(b) Expedited initial decisions are not precedential.

(c) This expedited initial decision will become final after 35 days and is binding upon the parties unless a petition for review is filed or the Board reopens the case on its own motion pursuant to § 1201.117.

Petitions for Review

§ 1201.219 Petitions for review.

(a) Any party may file with the Board a petition for review of the expedited initial decision before it becomes final. A copy must be served on all persons on the service list of the initial decision.

(b) Petitions for review must be filed with the Clerk of the Board within 35 days from the date of the decision.

Supportive briefs must accompany the petitions for review and shall be limited to 15 pages. Cross Petitions for Review and/or opposition briefs must be filed with the Board within 20 days of the date of service of the petition for review and shall be limited to 10 pages. Response to a Cross Petition for Review must be filed within 20 days of the date of service of the Cross Petition and shall be limited to 10 pages. The record shall close at the time the brief in opposition or response to a Cross Petition is scheduled to be received by the Board unless the Board sets a different date.

§ 1201.220 Standard of review.

Section 1201.115 of Subpart B shall apply.

§ 1201.221 Final decision.

The Board will issue a final decision no later than 35 days from the date the file is certified as complete for review. Decisions under this section are not precedential.

§ 1201.222 Judicial review.

Any employee or applicant for employment adversely affected by a final order or decision of the Board may obtain judicial review under the provisions of 5 U.S.C. 7703.

BILLING CODE 7400-01-M

Appendix I to Part 1201—Merit Systems Protection Board Appeal Form

UNITED STATES MERIT SYSTEMS PROTECTION BOARD

APPEAL

AGENCY USE ONLY

INSTRUCTIONS

The purpose of this form is to help you provide important information to the U.S. Merit Systems Protection Board ("the Board") when you file an appeal. You are not required to use this form, and you are not limited to answering the questions on the form if you feel there is other information you wish to provide. However, if you do not use the form, your appeal documents must comply with the Board's regulations. Your agency's personnel office will provide you with a copy of these regulations and the Board advises you to review them.

All appeals filed before agency action has been taken will be considered premature and will be returned without action.

All appellants who elect to use this form should complete Parts I through V. Only those who are appealing reduction-in-force (RIF) actions are required to complete Part VI. The information must be typed or printed clearly. Answer all questions and use "N/A" when the question is not applicable to your appeal.

You may supplement your response to any question in the space provided on page 4 or, if needed, on separate sheets of paper. If separate sheets are used, please put your name and Social Security number at the top of each page. Indicate by number which question you are answering, and attach the extra pages to the form.

In addition to the formal appeals process, appellant may elect to use the Board's Voluntary Expedited Appeals Procedure (VEAP) by marking the appropriate box in Part II below. A detailed explanation of the expedited process is presented on the last page of this form.

Where to file—You or your representative are required to file one original and one copy of this form, together with its attachments, with the Board's regional office identified in the decision notice provided by the agency. Filing must be made either by personal delivery during normal business hours to the appropriate Board regional office or by mail addressed to that office. The Board recommends but does not require that you use certified mail.

IMPORTANT

All appellants must sign and date the form in the space provided at the end of page 4 for it to be accepted by the Board, and to indicate approval of the contents of the entire form.

PRIVACY ACT STATEMENT

This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

You should know that the decisions of the U.S. Merit Systems Protection Board on appeal are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

PART I. APPELLANT IDENTIFICATION

1. NAME *(Last, first, middle)*

2. SOCIAL SECURITY NUMBER

3. PRESENT ADDRESS *(Number and street, city, state, and ZIP code)*. YOU ARE REQUIRED TO NOTIFY THE BOARD OF ANY ADDRESS CHANGE IN ORDER TO INSURE THE CORRECT DELIVERY OF A DECISION

4. HOME PHONE *(Include area code)*

5. OFFICE PHONE *(Include area code)*

PART II. EXPEDITED APPEALS

6. VOLUNTARY EXPEDITED APPEALS PROCEDURE. *For a matter appealable to the Board, any appellant may elect the Voluntary Expedited Appeals Procedure as an alternative to the formal MSPB appeal process. For a detailed explanation of the Voluntary Expedited Appeals Procedure, see p. 4.*

☐ Yes, I elect the Voluntary Expedited Appeals Procedure

☐ No, I do not elect the Voluntary Expedited Appeals Procedure

PART III. APPEALED ACTION

7. BRIEFLY DESCRIBE THE *AGENCY ACTION* YOU WISH TO APPEAL AND ATTACH ANY RELEVANT DOCUMENTS INCLUDING THE PROPOSAL LETTER, THE DECISION LETTER, AND THE RELEVANT SF 50 OR ITS EQUIVALENT.

8. NAME AND ADDRESS OF AGENCY *(Including Bureau, or other Division as well as street address, city, state, and ZIP code)*

9. APPELLANT'S POSITION TITLE AND DUTY STATION AT TIME OF ACTION

10A. GRADE AT TIME OF ACTION

10B. SALARY AT TIME OF ACTION

$ PER

11. ARE YOU A VETERAN OR ENTITLED TO THE EMPLOYMENT RIGHTS OF A VETERAN? ☐ YES ☐ NO	12. EMPLOYMENT STATUS ☐ Temporay ☐ Applicant ☐ Retired ☐ Permanent ☐ Term	13. IF RETIRED, DATE OF RETIREMENT *(Month, day, year)*

14. TYPE OF SERVICE ☐ Competitive ☐ Excepted	15. LENGTH OF GOVERNMENT SERVICE	16. LENGTH OF SERVICE WITH ACTING AGENCY	17. WERE YOU SERVING A PROBATIONARY OR TRIAL PERIOD AT THE TIME ACTION WAS TAKEN BY THE AGENCY? ☐ YES ☐ NO

18. DATE WRITTEN PROPOSED ACTION NOTICE RECEIVED *(Month, day, year) (Attach copy)*	19. DATE FINAL DECISION NOTICE RECEIVED *(Month, day, year) (Attach Copy)*	20. EFFECTIVE DATE OF ACTION *(Month, day, year)*

21. WHY DO YOU THINK THE AGENCY WAS WRONG IN TAKING THIS ACTION? *(Explain briefly)*

22. WHAT ACTION WOULD YOU LIKE THE BOARD TO TAKE ON THIS CASE?

23. IF YOU BELIEVE YOU WERE DISCRIMINATED AGAINST BY THE AGENCY, IN CONNECTION WITH THE MATTER APPEALED, BECAUSE OF EITHER YOUR RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, MARITAL STATUS, POLITICAL AFFILIATION, HANDICAPPING CONDITION, OR AGE, INDICATE SO AND EXPLAIN WHY YOU BELIEVE IT TO BE TRUE. YOU MUST INDICATE, BY EXAMPLES, HOW YOU WERE DISCRIMINATED AGAINST .

24. HAVE YOU FILED A FORMAL DISCRIMINATION COMPLAINT CONCERNING THE MATTER WHICH YOU ARE SEEKING TO APPEAL WITH YOUR AGENCY OR ANY OTHER AGENCY?
☐ YES *(Attach copy)* ☐ NO

24A. IF YES, DATE FILED *(Month, day, year)*	24B. PLACE FILED *(Agency and location)*	24C. HAS THERE BEEN A DECISION? ☐ YES *(Attach copy)* ☐ NO

25. HAVE YOU, OR ANYONE IN YOUR BEHALF, FILED A FORMAL GRIEVANCE WITH YOUR AGENCY CONCERNING THIS MATTER, UNDER A NEGOTIATED GRIEVANCE PROCEDURE PROVIDED BY A COLLECTIVE BARGAINING AGREEMENT?

☐ YES *(Attach copy)* ☐ NO

25A. IF YES, DATE FILED *(Month, day, year)*	25B. PLACE FILED *(Agency and location)*	25C. HAS DECISION BEEN ISSUED? ☐ YES *(Attach copy)* ☐ NO
25D. IF YES, DATE FILED *(Month, day, year)*	25E. NAME OF ISSUING OFFICIAL	25F. TITLE OF ISSUING OFFICIAL

PART IV. HEARING

26. YOU MAY HAVE A RIGHT TO A HEARING ON THIS APPEAL. IF YOU DO NOT WANT A HEARING, THE BOARD WILL MAKE ITS DECISION ON THE BASIS OF THE DOCUMENTS YOU AND THE AGENCY SUBMIT. IF NO SQUARE IS CHECKED, THE BOARD WILL PRESUME YOU ARE WAIVING A HEARING. *DO YOU WANT A HEARING?*

☐ YES ☐ NO

IF YOU CHOOSE TO HAVE A HEARING THE BOARD WILL NOTIFY YOU WHEN AND WHERE IT IS TO BE HELD.

PART V. DESIGNATION OF REPRESENTATIVE

27. YOU HAVE THE RIGHT TO DESIGNATE SOMEONE TO REPRESENT YOU ON THIS APPEAL. IF HE/SHE AGREES TO DO SO, THIS PERSON DOES NOT HAVE TO BE AN ATTORNEY. THE AGENCY HAS A RIGHT TO CHALLENGE YOUR CHOICE OF A REPRESENTATIVE IF THERE IS A CONFLICT OF INTEREST OR POSITION. YOU MAY CHANGE YOUR DESIGNATION OF A REPRESENTATIVE AT A LATER DATE, IF YOU SO DESIRE, BUT MUST NOTIFY THE BOARD PROMPTLY OF ANY CHANGE.

27A. "I HEREBY DESIGNATE _____ TO SERVE AS MY REPRESENTATIVE DURING THE COURSE OF THIS APPEAL. I UNDERSTAND THAT MY REPRESENTATIVE IS AUTHORIZED TO ACT ON MY BEHALF."

27B. REPRESENTATIVE'S ADDRESS AND PHONE NUMBER	27C. REPRESENTATIVE'S SIGNATURE	27D. DATE
	27E. REPRESENTATIVE'S EMPLOYER	

PART VI. REDUCTION-IN-FORCE (RIF)

INSTRUCTIONS: FILL OUT THIS PART ONLY IF YOU ARE APPEALING FROM A REDUCTION-IN-FORCE (RIF). YOUR AGENCY'S PERSONNEL OFFICE CAN FURNISH YOU MOST OF THE INFORMATION REQUESTED BELOW.

28. RETENTION GROUP AND SUB-GROUP	29. SERVICE COMPUTATION DATE	30. HAS YOUR AGENCY OFFERED YOU ANOTHER POSITION RATHER THAN SEPARATING YOU? ☐ YES ☐ NO
31. TITLE OF POSITION OFFERED	32. GRADE OF POSITION OFFERED	33. SALARY OF POSITION OFFERED $ PER
34. LOCATION OF POSITION OFFERED	35. DID YOU ACCEPT THIS POSITION? ☐ YES ☐ NO	

36. EXPLAIN WHY YOU BELIEVE YOU SHOULD NOT HAVE BEEN AFFECTED BY THE REDUCTION-IN-FORCE *(Explanations could include: You were placed in the wrong retention group or subgroup; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; full 30-day notice was not given; you believe you have assignment rights (bump or retreat rights); or any other reasons. Please provide as much information as possible regarding each reason.)*

37 SUPPLEMENTAL ANSWER SPACE

EXPLANATION OF VOLUNTARY EXPEDITED APPEALS PROCEDURE (See Part II)

a. *ELECTION BY APPELLANT.* Employees or applicants for employment who are entitled to file an appeal before the Board may elect the voluntary expedited procedure as an alternative to the formal Board procedures. The goal of this expedited process is the issuance of a nonprecedential decision in routine cases within 60 days of the election of the voluntary expedited appeals procedure.

b. *CONSENT BY AGENCY.* If an employee or an applicant for employment elects to use this alternative procedure, the employing agency will be allowed to consent to or decline the procedure as well. In the event the employing agency does not wish to use the expedited procedure, the appeal will be processed in accordance with the formal Board procedures.

c. *REVIEW BY MSPB REGIONAL DIRECTOR.* If the agency consents to the voluntary expedited appeals procedure, the MSPB regional director will review the summary of the case filed by the agency and determine whether the case is appropriate for the expedited procedure. The standards used in making this determination will be the routine, nonprecedential nature of the appeal as well as workload requirements and availability of resources in the MSPB regional office.

d. *PROCESSING OF APPEAL.* If the case is processed under this expedited process, the parties will be notified by an Order of Acknowledgment of their obligation to file a Joint Appeals Record containing statements of issues and positions with respect to those issues, requests for hearing, witness lists, the agency's file and two dates agreed upon by the parties for the hearing. A presiding official specifically trained in informal dispute resolution will contact the parties during this time to ensure that the parties understand their obligations and to help promote an environment conducive to informal settlement.

e. *HEARING AND ISSUANCE OF EXPEDITED DECISION.* In the event settlement is not achieved, a hearing, if requested, will be held at *the employment site* within 15 days from the date the Joint Appeals Record is due. The presiding official will then issue an expedited initial decision no later than 15 days from the close of the hearing. If no hearing is requested, a decision on the record will be issued no later than 60 days from the date of the Board's acknowledgment order.

f. *PETITION FOR REVIEW.* Any party may file a petition for Board review of the expedited initial decision 35 days from the date of the decision. The criteria for review are the same under both the voluntary expedited appeals procedure and the formal appeals procedure.

ATTENTION—THIS APPEAL MUST BE SIGNED

I CERTIFY that all of the statements made in this Appeal are true, complete, and correct to the best of my knowledge and belief.	SIGNATURE OF APPELLANT	DATE SIGNED

U.S. GOVERNMENT PRINTING OFFICE : 985-461-275 20 84

BILLING CODE 7400-01-C

Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals

All submissions shall be addressed to the Regional Director, Merit Systems Protection Board, at the below-listed addresses, according to geographic region of the employing agency or as required by section 1201.4(e).

Address of Appropriate Regional Office and Area Served:

1. Atlanta Regional Office, 1365 Peachtree Street, NE., Suite 500, Atlanta, Georgia 30309–2366 (Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina)
2. Boston Regional Office, 150 Causeway Street, Room 1122, Boston, Massachusetts 02114–1390 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)
3. Chicago Regional Office, 230 South Dearborn Street, 31st Floor, Chicago, Illinois 60604–1669 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)
4. Dallas Regional Office, 1100 Commerce Street, Room 6F20, Dallas, Texas 75242–1001 (Arkansas, Louisiana, Oklahoma, Texas, Swan Island)
5. Denver Regional Office, 730 Simms Street, Room 301, Golden, Colorado 80401–4720 (Arizona, Colorado, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, Wyoming)
6. New York Regional Office, 26 Federal Plaza, Room 2339, New York, New York 10278–0022 (New Jersey, New York, Puerto Rico, Virgin Islands)
7. Philadelphia Regional Office, U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106–2904 (Camden County (New Jersey), Delaware, Maryland, Pennsylvania, Virginia, West Virginia)
8. St. Louis Regional Office, 1520 Market Street, Room 1740, St. Louis, Missouri 63103–2692 (Iowa, Kentucky, Missouri, Tennessee)
9. San Francisco Regional Office, 525 Market Street, Room 2800, San Francisco, California 94105–2708 (California)
10. Seattle Regional Office, 915 Second Street, Room 1840, Seattle, Washington 98174–1001 (Alaska, Hawaii, Idaho, Oregon, Washington, Pacific overseas)
11. Washington Regional Office, 5203 Leesburg Pike, Suite 1109, Falls Church, Virginia 22041–3401 (Washington, DC Metropolitan Area, all overseas areas not otherwise covered).

Appendix III to Part 1201—Approved Hearing Locations

Atlanta Region

Atlanta, Georgia
Augusta, Georgia
Macon, Georgia
Savannah, Georgia
Birmingham, Alabama
Huntsville, Alabama
Montgomery, Alabama
Jacksonville, Florida
Miami, Florida
Orlando, Florida
Pensacola, Florida
Tampa/St. Petersburg, Florida
Jackson, Mississippi
Asheville, North Carolina
Jacksonville, North Carolina
Raleigh, North Carolina
Columbia, South Carolina
Charleston, South Carolina

Boston Region

Boston, Massachusetts
Hartford, Connecticut
New Haven, Connecticut
Bangor, Maine
Portland, Maine
Manchester, New Hampshire
Portsmouth, New Hampshire
Providence, Rhode Island
Burlington, Vermont

Chicago Region

Chicago, Illinois
Davenport, Iowa/Rock Island, Illinois
Indianapolis, Indiana
Detroit, Michigan
Minneapolis/St. Paul, Minnesota
Cleveland, Ohio
Cincinnati, Ohio
Columbus, Ohio
Dayton, Ohio
Milwaukee, Wisconsin

Dallas Region

Dallas, Texas
Corpus Christi, Texas
El Paso, Texas
Houston, Texas
San Antonio, Texas
Temple, Texas
Texarkana, Texas
Little Rock, Arkansas
Alexandria, Louisiana
New Orleans, Louisiana
Oklahoma City, Oklahoma
Tulsa, Oklahoma

Denver Region

Denver, Colorado
Pueblo, Colorado
Phoenix, Arizona
Tucson, Arizona
Wichita, Kansas
Billings, Montana
Great Falls, Montana
Missoula, Montana
Omaha, Nebraska
Las Vegas, Nevada
Reno, Nevada
Albuquerque, New Mexico
Bismarck, North Dakota
Rapid City, South Dakota
Sioux Falls, South Dakota
Salt Lake City, Utah
Casper, Wyoming

New York Region

Albany, New York
New York, New York
Buffalo, New York
Syracuse, New York
Newark, New Jersey

Philadelphia Region

Philadelphia, Pennsylvania
Harrisburg, Pennsylvania
Pittsburgh, Pennsylvania
Wilkes-Barre, Pennsylvania
Dover, Delaware
Baltimore, Maryland
Norfolk, Virginia
Richmond, Virginia
Roanoke, Virginia
Charleston, West Virginia
Morgantown, West Virginia

San Francisco Region

San Francisco, California
Fresno, California
Los Angeles, California
Sacramento, California
San Diego, California

Seattle Region

Seattle, Washington
Spokane, Washington
Richland, Kennewick and Pasco, Washington
Anchorage, Alaska
Honolulu, Hawaii
Boise, Idaho
Pocatello, Idaho
Medford, Oregon
Portland, Oregon

St. Louis Region

St. Louis, Missouri
Kansas City, Missouri
Springfield, Missouri
Des Moines, Iowa
Lexington, Kentucky
Louisville, Kentucky
Knoxville, Tennessee
Memphis, Tennessee
Nashville, Tennessee

Washington Region

Bailey's Crossroads, Virginia
Washington, DC

Dated: June 24, 1986.

Maria L. Johnson,

Acting Chairman.

[FR Doc. 86–15280 Filed 7–9–86; 8:45 am]

BILLING CODE 7400–01–M

federal register

Thursday
July 10, 1986

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43, 45 and 91

Aircraft Identification and Retention of Fuel System Modification Records; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 45 and 91

[Docket No. 25033; Notice No. 86-9]

Aircraft Indentification and Retention of Fuel System Modification Records

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Customs Service (Customs) of the Department of Treasury has expressed an urgent need to increase the effectiveness of their drug interdiction programs in order to stop the flow of illegal drugs into the United States by air. Potentially high-risk aircraft operations are often used to bypass drug interdiction efforts. Because of difficulties in identifying these aircraft involved in drug trafficking, Customs has requested the FAA to consider amending certain regulations. To assist in identifying aircraft suspected of being used in these potentially high-risk operations, the FAA proposes to require: (1) That 12-inch high nationality and registration marks (N-numbers) be displayed on aircraft that penetrate an Air Defense Identification Zone (ADIZ) or a Defense Early Warning Identification Zone (DEWIZ); (2) that a civil aircraft identification data (I.D.) plate be displayed so that it is legible to a person on the ground, and must be either adjacent to the right rear-most entrance door or on the fuselage surface near the tail surfaces; and (3) that a copy of the FAA Form 337 for extended-range fuel tanks installed within the passenger or a baggage compartment be obtained and kept in the aircraft by the owner or operator. Customs contends that these actions are necessary to help stop the use of aircraft in illegal activities in view of the severity of the drug abuse problem, the major increase in illegal drug importations, and the need for action to expand effectiveness of narcotic interdiction.

DATE: Comments must be received on or before September 9, 1986.

ADDRESS: Comments on the proposal are to be marked "Docket No. 25033" and mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25033, 800 Independence Avenue, SW., Washington, DC 20591; or deliver comments in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, DC.

Comments may be inspected in Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Joseph J. Gwiazdowski, Aircraft Manufacturing Division (AWS-200), Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 426-8361.

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 effects that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate 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 Docket No. 25033." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments 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 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

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) 426-8056. Requests 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, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

While the FAA does not enforce the anti-drug smuggling and related criminal statutes, the agency is concerned with hazards to air commerce in the United States arising from the use of aircraft to escape detection in importing illegal, contraband substances (narcotic drugs, marijuana, and depressant or stimulant drugs) into the United States. The hazards to air commerce have increased consistent with the growing number of pilots who are willing to risk the carriage of these illegal goods despite escalating law enforcement activities. The means for detection of these aircraft include low altitude radar, law enforcement pursuit aircraft, and advanced police techniques. Pilots committed to evading detection in order to avoid severe penalties may be expected to engage in extremely dangerous flight techniques to avoid pursuit aircraft. These techniques include: very low flight to avoid radar; landing and taking off from unprepared landing areas; operation without lights; and operating in weather conditions beyond the capability or qualifications of the aircraft or pilot. These flight techniques create a safety hazard for all other aircraft in the area and for persons and property on the surface. Further, many of the aircraft used for such operations have been equipped with extended-range fuel tanks which are not installed in accordance with the Federal Aviation Regulations (FAR), posing an additional safety problem. Thus, while other agencies are responsible for criminal law enforcement concerning illegal substances (narcotic drugs, marijuana, and depressant or stimulant drugs), the hazardous aeronautical activities of pilots smuggling these substances into the U.S. pose a direct threat to air commerce. This threat was a basis for the FAA adopting FAR § 91.12, which provides that no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marijuana, and depressant or stimulant drugs are carried in the aircraft; unless authorized under Federal or State law. Customs reports that the vast majority of drug trafficking by air into the United States passes through an ADIZ or DEWIZ and is conducted in small, twin-engine aircraft.

As part of a coordinated effort to develop more effective means to curb these hazardous flight operations, several meetings were held involving FAA and Customs representatives. The meetings focused on specific drug enforcement problems related to FAA

responsibilities. On July 11, 1985 the Assistant Secretary of the Department of Treasury sent a letter to the FAA outlining and explaining the specific regulatory changes which Customs considers to be necessary to assist it in curbing use of aircraft to carry illegal substances, and identifying those aircraft which may be used for drug smuggling. A copy of that letter has been placed in the public docket. The request is based on the increase in illegal drug importation and on the value to law enforcement officials of positive identification of those aircraft which may be involved in such activities. Customs believes that the amendments, if adopted, would represent a significant step toward curbing the use of aircraft for drug trafficking. This rulemaking proposal addresses the following three problems identified by Customs:

(1) Aircraft displaying 3-inch high N-numbers while operating in the ADIZ or DEWIZ hinder positive identification because the 3-inch numbers are too difficult to see and read;

(2) Aircraft affixed with I.D. plates which cannot readily be seen hamper the prompt identification of stolen or falsely numbered aircraft; and

(3) Aircraft modified with unauthorized fuel tanks in the passenger compartment or a baggage compartment that cannot be idenfified readily, since the records for authorizing aircraft modifications are not required to be kept aboard the aircraft.

Registration Numbers

As part of their duties to combat the illegal importation of drugs into this country, the Customs Service and other law enforcement and military groups frequently must attempt to identify, from a high-performance aircraft, a small low-performance aircraft suspected of being used in the illegal activity. Many of these suspected aircraft have small, 3-inch registration numbers which are difficult to see and read when attempting air-to-air identification. This requires maneuvering relatively close to the suspect aircraft so that the small registration number (N-number) can be read. The use of larger registration marks would make identification easier and would result in safer operation by maintaining a larger separation between the aircraft.

Prior to 1977, 12-inch N-numbers were required on the sides of fixed-wing aircraft. From 1977 to 1981, 3-inch registration marks were required on small fixed-wing aircraft with speeds not greater than 180 knots. However, the FAA received complaints from private citizens, law enforcement agencies, the U.S. Customs Service, and the Department of Defense. Identification for safety and law enforcement purposes, including apprehending smugglers, was far more difficult or was impossible with 3-inch marks. Prior to 1983, helicopters were required to have only 2-inch marks on the sides of the fuselage, and were required to have 20-inch marks on the bottom surface.

The FAA adopted Amendments 45–13 (46 FR 48600; October 1, 1981) and 45–15 (48 FR 11392; March 17, 1983) to reinstate 12-inch N-numbers on fixed-wing aircraft and rotorcraft to improve positive identification of those aircraft previously allowed to display small N-numbers. The amendments were adopted to resolve various problems involved with aircraft identification, including the concerns for law enforcement. Also, the display of 12-inch N-numbers on the sides of aircraft has been advocated by the U.S. Air Force as a means of permitting greater aircraft separation during air-to-air identification of aircraft. However, to avoid the undue cost of compliance to owners of the affected aircraft, when 12-inch N-numbers were reinstated the display of small N-numbers was "grandfathered" until the aircraft were repainted or the N-numbers were restored, repainted, or changed.

The Customs Service has found that many aircraft flying into the United States display the small, 3-inch marks, making it difficult to identify suspect aircraft. The vast majority of the suspected aircraft pass through an ADIZ or DEWIZ prior to entering the United States. It is in an ADIZ or DEWIZ in which Customs or another law enforcement or military organization is likely to attempt air-to-air identification of the aircraft.

Indentification Plates

The Customs Service indicates that, when investigating aircraft suspected of being used for smuggling, it is difficult to determine whether the registration number on the aircraft is false. False numbers may be used, for instance, on stolen aircraft, which frequently are used for smuggling. Cross-checking the N-number with the I.D. plate for the aircraft assists in determining whether the N-number is false. The I.D. plates for many aircraft, however, are located such that they cannot be read from the exterior of the aircraft, making it difficult for investigators to make an on-the-spot check of a suspected aircraft. Customs contends that the repositioning of existing I.D. plates, or placement of another I.D. plate on the exterior of the aircraft near the main entrance, would enable investigators to compare quickly the serial number with the N-number to help determine whether suspect aircraft have been stolen or the N-numbers falsified.

The FAA has adopted several related amendments concerning I.D. plates based on the needs and comments of the aviation community. Section 45.11 of the FAR was changed by Amendment 45–3 (52 FR 187; January 10, 1967) to require the I.D. plate to be in an accessible location "near an entrance," not necessarily an *external* location, to allow for maximum I.D. plate protection and to facilitate normal aircraft inspection. Also, based on information presented by small aircraft manufacturers, the FAA again changed § 45.11 of the FAR by adopting Amendment 45–7 (33 FR 14402; September 25, 1968) to provide an optional location for an aircraft I.D. plate. Under this option, the I.D. plate may be affixed on the exterior of the fuselage near the tail surfaces, if it is legible to an observer on the ground. Additionally, FAA Advisory Circular AC 45–2, Identification and Registration Markings, which provides guidance and information concerning the identification and marking requirements for aircraft, includes a provision that, if under certain conditions the I.D. plate has to be covered or enclosed in any manner, its accessibility is considered acceptable if it can be revealed without the use of tools.

Fuel Tanks

Customs reports that often aircraft used to smuggle drugs are modified with fuel tanks which are installed in the passenger or a baggage compartment and which are not authorized by the FAA. These fuel tanks are installed to permit the aircraft to make long flights, such as from South America to the United States. These unauthorized fuel tanks create a safety hazard because there is no assurance that they meet the safety standards established by the FAA. In addition, these aircraft may have extraordinarily long range, which adds to the difficulty in pursuing suspected aircraft.

One problem with attempting to identify the unauthorized, extended-range fuel tanks, however, is that it is difficult to check on the spot, whether the tanks have been installed in accordance with FAA requirements. The FAR type certification procedures require FAA approval for changes to type design of any U.S. civil aircraft modified with extended-range fuel tanks. Evidence of such approval varies depending on the airworthiness certificate issued for the aircraft and purpose of operation.

One way that approval can be evidenced is for an authorized person performing the work to execute an FAA Form 337 in accordance with Appendix B of Part 43 of the FAR. However, there is currently no requirement for records of such authorization to be on board the aircraft. Customs contends that a regulation requiring an FAA Form 337 to be aboard the aircraft when extended-range fuel tanks are installed within the passenger or baggage compartment would assist Customs in concentrating interdiction efforts on suspicious aircraft not authorized to have such installations. Customs' investigators could make an on-the-spot check of the suspected aircraft's Form 337. In addition, this action would assist the FAA in identifying aircraft with unauthorized fuel tanks, which are potentially hazardous to the aviation community and the public.

Discussion of the Proposals

A. Improve Identification of Aircraft Penetrating the ADIZ and DEWIZ

Section 45.21 and 45.29

This proposal would require that all aircraft operating in the ADIZ or DEWIZ display 12-inch markings. However, if any surface authorized to be marked is not large enough for full-size marks, marks as large as practicable would have to be placed on the largest of the authorized surfaces in accordance with § 45.29(f).

To ease the burden on owners of affected aircraft while operating in an ADIZ or DEWIZ zone under the provision of § 45.21(d), this proposal would permit 12-inch markings to be temporary on those "grandfathered" aircraft which are currently authorized to operate with 3-inch markings as specified in § 45.29(b). Hence, aircraft that display marks smaller than 12 inches, as provided in Part 45, would be permitted to continue to display those marks except for aircraft operations conducted in the ADIZ or DEWIZ.

Thus, this proposal would accomplish a prime objective, which is to improve air-to-air identification of aircraft operating in an ADIZ or DEWIZ, without imposing an additional burden on the majority of the aviation community. This would also enhance safety by permitting greater separation between the unidentified aircraft and the investigating aircraft during air-to-air identification.

B. Change I.D. Plate Location

Section 45.11

This proposal would require all aircraft to display an I.D. plate, as specified by § 45.11(a), on the aircraft fuselage exterior, in a location legible to an observer on the ground, adjacent to the right rear-most entrance door, or on the exterior surface of the tail, provided the I.D. plate would be legible to an observer on the ground.

This proposal would require the aircraft I.D. plate in an easily accessible area, legible to an observer on the ground, to facilitate verification of aircraft identification by FAA inspectors, Customs investigators, and other law enforcement officials. This would provide access to the I.D. plate data without having to enter the aircraft. It would make the I.D. plate information and N-number available simultaneously to allow a cross reference, to help determine whether the aircraft may have been stolen or to determine if the registration number has been falsified. It would also facilitate FAA inspectors' identification of aircraft for maintenance purposes.

This portion of the proposal would not be retroactive since this could result in a major change which would pose an undue burden on many aircraft owners. For example, if the I.D. plates currently affixed to aircraft, as required, were to be removed from the existing locations, this could result in damage to the aircraft and I.D. plate, and might require burdensome engineering and manufacturing changes such as structural, interior or exterior repair, or repainting.

Accordingly, this notice proposes to require that those aircraft in service prior to 90 days after the effective date of this amendment display the model designation and builder's serial number on the fuselage exterior, adjacent to the right rear-most entrance in addition to the permanently affixed I.D. plate. The model designation and serial number would be required to be affixed in such a manner that it would not likely be defaced or removed during normal service. Unlike the regular identification plate, this "supplemental" identification would not have to be affixed in a manner such that it is not likely to be lost or destroyed in an accident. Thus, it could be applied in a relatively low-cost manner, such as by painting the numbers on the fuselage.

In addition, § 45.11(a) would be clarified by adding a comma, which was inadvertently omitted when this section was last amended.

C. Illegal Fuel Tank Installations

Part 43, Appendix B (a) and (d); § 91.27(c); and § 91.173 (a) and (d)

This proposal would require that all aircraft modified to incorporate an extended-range fuel system by the installation of additional fuel tanks in the passenger or baggage compartment, under Part 43 of the FAR, physically have on board the aircraft a copy of the FAA Form 337. This would include aircraft previously not required to have an FAA Form 337 for fuel tank installations when operating with a special flight permit for the purpose of delivery or export. This proposal would also make clear that the owner or operator of an aircraft with such fuel tanks would be required to present this Form 337 for inspection by any law enforcement officer.

This proposal would provide one means for FAA, Customs, and other investigators to quickly obtain evidence as to whether the fuel system modification in the aircraft is authorized or possibly illegally installed. Enforcement action could then be taken by the FAA against persons operating such aircraft, and action could be taken to prevent the aircraft from being flown. This proposal would assist Customs in concentrating interdiction efforts on those aircraft modified with unauthorized fuel tank installations and which are possibly being used for illegal drug trafficking. By limiting this proposed rule to aircraft modified with fuel tanks in the passenger or baggage compartments, operators of aircraft with FAA-approved extended-range fuel tanks located elsewhere in the aircraft, e.g., wing tip tanks, would not be required to keep that authorization on board the aircraft.

Regulatory Evaluation

The regulatory evaluation prepared for this notice examines the benefit and cost aspects of the establishment of identification, registration marking and recording of major repair requirements that would impact general aviation aircraft. The notice proposes amendments to Parts 43, 45, and 91 of the FAR, and it would require the following:

1. That 12-inch high nationality and registration marks (N-numbers) be displayed on aircraft that penetrate an ADIZ or a DEWIZ.

2. That either a civil aircraft identification (I.D.) plate or its information be displayed in a legible area on the exterior of an aircraft near the right rear-most entrance.

3. That a copy of the FAA Form 337 for fuel tanks installed within the passenger compartment or a baggage compartment, under Part 43 of the FAR, be kept in the aircraft by the owner or operator.

The proposed amendments are the result of several meetings between officials at the FAA and the U.S. Customs Service of the Department of Treasury. Customs contends that this action is necessary because of the severity of the drug abuse problem, the major increase in illegal drug importations, and the need for action to expand effectiveness of narcotic interdiction. As a result of those meetings, coupled with evidence that potentially high-risk aircraft operations are often used to bypass interdiction efforts, the FAA agreed to propose the regulatory action required to respond to the Department of Treasury's request.

Estimates of the cost of compliance with the proposed amendments to Parts 43, 45, and 91 have been developed by the FAA. Cost estimates were obtained primarily from civil aircraft manufacturers and fixed based operators. The estimate of impacts is subject to revision prior to the issuance of a final rule.

This evaluation estimates that the one-time cost of compliance associated with the proposed amendments to § 45.11 (I.D. Plate Requirement) and § 45.29 (12-inch N-number Requirement) would range between $7 million and $8 million (present discounted value of cost at 10 percent, 1987). The proposed amendment to § 45.11 would impact an estimated 79,300 to 82,000 fixed-wing aircraft, rotorcraft, and other types of civil aircraft (blimps, balloons, and gliders) at a cost of $100 each. Morover, the proposed amendment to § 45.29 would affect an estimated 3,900 to 13,500 fixed-wing aircraft and rotorcraft at a cost of $55 and $115 each, respectively. Collectively, the cost of compliance would range between $100 and $215 per aircraft (1985 dollars). Conversely, the proposed amendments to Appendix B of Part 43 (Recording of Major Repairs and Major Alterations), § 91.27 (Civil aircraft: Certifications required), and § 91.173 (Maintenance records.) are estimated to impose no additional cost. At present, the FAA Form 337 is filled out in duplicate, with copies given to the owner/operator and the FAA. Under the proposed amendment, this form would be filled out in triplicate, in order that a copy can be kept on board an aircraft modified with a fuel tank in the passenger compartment or a baggage compartment. In addition, the proposed amendment to § 45.21 (General) is estimated to impose no additional cost to owners/operators because it does not represent a requirement.

The anticipated benefits of the proposed amendments are these: (1) Improved positive identification of those aircraft previously allowed to display small N-numbers while operating in the ADIZ or DEWIZ, (2) Enhanced Customs' effort to determine whether a suspect aircraft had been stolen or the N-numbers falsified, and (3) Increased effectiveness of Customs in concentrating interdiction efforts on suspicious aircraft not authorized to have fuel tanks installed in the passenger compartment or a baggage compartment. The FAA has been unable to quantitatively estimate the extent to which Customs' drug interdiction efforts are expected to be enhanced as a result of this proposal. This difficulty is largely attributed to the fact that Customs' drug enforcement efforts represent a public good. This good does not subject itself to market evaluation. Thus, it is extremely difficult to evaluate these benefits in monetary terms.

Nonetheless, safety benefits will also accrue from this proposal. These benefits would be related to the lowering of fatalities and serious injuries associated with operation of civil aircraft in drug trafficking activity. A review of the National Transportation Safety Board's data base for drug related accidents revealed that 127 fatalities and 33 serious injuries occurred between 1975 and 1984. During the period, these statistics equated to an annual average of 13 fatalities and 3 serious injuries related to drug trafficking activity. This proposal is expected to have a positive impact on these grim statistics, though to what extent is not known by the FAA. In addition to the anticipated decrease in fatalities and serious injuries associated with drug trafficking activity, the overall level of drug abuse activity could be reduced as the result of the proposed rule. An indication of the potential benefits that could accrue from reduced drug abuse activity is shown in a 1984 report by the Research Triangle Institute. The report revealed that the economic cost to society of drug abuse in the United States amounts to $64 billion annually, in which lost labor productivity represents over half of this figure. The figure for drug abuse was converted from 1983 dollars ($60 billion) to 1985 dollars ($64 billion) by the FAA. If, for example, Customs' enhanced drug interdiction efforts were to impact only one-tenth of one percent of this figure, there would be substantial societal gain of $64,000,000 annually.

Regulatory Flexibility Determination

The FAA has determined that, under the criteria of the Regulatory Flexibility Act of 1980, the proposed amendments contained in this notice will not have a significant economic impact on a substantial number of small entities. The responsibility for marking and providing I.D. plate information for existing aircraft is placed directly on the owner or operator of the aircraft. However, for new aircraft the I.D. plate responsibility would be placed on the applicant for an airworthiness certificate, usually the manufacturer. This requirement would impose no additional cost since it would only require that the I.D. plate be located on the exterior rather than interior of the aircraft. The majority of small entities impacted by this proposal would represent operators of unscheduled aircraft for hire. These operators would incur a one-time compliance cost ranging between $155 and $215. These costs would be far below the annualized threshold of significant regulatory cost of $3,540. Therefore, if enacted, this proposal would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

All foreign and domestic manufactured aircraft sold in the United States would need to be identified in accordance with the provisions of this proposal. The cost of marking the aircraft will be borne by individual domestic owners or operators only. If adopted, this proposal would have no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Conclusion

Since the proposals contained in this FAA document would assist the U.S. Customs Service of the Department of Treasury in its drug interdiction efforts as requested and would impose only a minimal cost on a minor part of the aviation community, the estimated benefits are expected to exceed the estimated costs of their implementation. For the reasons discussed above, I certify that under the criteria of the Regulatory Flexibility Act, these proposals, if adopted, would not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required. In addition, for the same reasons, the proposal does not involve a major rule under Executive Order 12291. Because it involves important DOT policy, the proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft regulatory evaluation for this 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

14 CFR Part 43

Aircraft.

14 CFR Part 45

Nationality.

14 CFR Part 91

Aircraft, Airworthiness directives and standards.

The Proposed Rule

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Parts 43, 45, and 91 of the Federal Aviation Regulations (14 CFR Parts 43, 45, and 91) as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. The authority citation for Part 43 is revised 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. By amending Appendix B to Part 43 by revising (a) introductory text and adding a new paragraph (d) to read as follows:

Appendix B—Recording of Major Repairs and Major Alternations

(a) Except as provided in paragraphs (b), (c), and (d), each person performing a major repair or major alteration shall—

* * * * *

(d) For extended-range fuel tanks installed within the passenger compartment or a baggage compartment, the person who performs the work and the person authorized to approve the work by § 43.7 shall execute an FAA Form 337 in at least triplicate. One (1) copy of the FAA Form 337 shall be placed on board the aircraft as specified in § 91.173. Remaining forms shall be distributed as required by (a) (2) and (3), or (c) (1) and (2) of this section as appropriate.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

3. The authority citation for Part 45 is revised to read as follows:

Authority: 49 U.S.C. 1348, 1354, 1401, 1402, 1421, 1423, 1522; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

4. By amending § 45.11 by revising (a) and adding a new paragraph (d) to read as follows:

§ 45.11 General.

(a) *Aircraft and aircraft engines.* Aircraft covered under § 21.182 of this chapter must be identified, and each person who manufactures an aircraft engine under a type or production certificate shall identify that engine, by means of a fireproof plate that has the information specified in § 45.13 marked on it by etching, stamping, engraving, or other approved method of fireproof marking. The identification plate for aircraft must be secured in such a manner that it will not likely be defaced or removed during normal service, or lost or destroyed in an accident. Except as provided in paragraphs (c) and (d) of this section, the aircraft identification plate must be secured to the aircraft fuselage exterior so that it is legible to a person on the ground, and must be either adjacent to the right rear-most entrance door or on the fuselage surface near the tail surfaces. For aircraft engines, the identification plate must be affixed to the engine at an accessible location, in such a manner that it will not likely be defaced or removed during normal service or lost or destroyed in an accident.

* * * * *

(d) On aircraft manufactured before October 8, 1986, the identification plate required by paragraph (a) of this section may be secured at an accessible location near an entrance, if the model designation and builder's serial number are also displayed on the aircraft fuselage exterior. The model designation and builder's serial number must be legible to a person on the ground and must be located either adjacent to the right rear-most entrance door or on the fuselage near the tail surfaces. The model designation and builder's serial number must be displayed in such a manner that they are not likely to be defaced or removed during normal service.

5. By amending § 45.21 by revising (d)(3) to read as follows:

§ 45.21 General.

* * * * *

(d) * * *

(3) It is marked temporarily to meet the requirements of § 45.22(c)(1), or § 45.29(h), or both.

6. By amending § 45.29 by revising (b) introductory text and adding a new paragraph (h) to read as follows:

§ 45.29 Size of marks.

* * * * *

(b) *Height.* Except as provided in paragraph (h), the nationality and registration marks must be of equal height and on—

* * * * *

(h) Each operator of an aircraft in an ADIZ or DEWIZ shall display on that aircraft temporary or permanent nationality and registration marks at least 12 inches high.

PART 91—GENERAL OPERATING AND FLIGHT RULES

7. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352, through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention of International Civil Aviation (61 STAT. 1180); 42 U.S.C. 4321 et. seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 21, 1983).

8. By amending § 91.27 by adding a new paragraph (c) as follows:

§ 91.27 Civil aircraft: Certifications required.

* * * * *

(c) No person may operate an aircraft with a fuel tank installed within the passenger compartment or a baggage compartment unless the installation was accomplished pursuant to Part 43, and a copy of FAA Form 337 authorizing that installation is on board the aircraft.

9. By amending § 91.173 by revising (c) and adding a new paragraph (d) to read as follows:

§ 91.173 Maintenance records.

* * * * *

(c) The owner or operator shall make all maintenance records required to be kept by this section available for inspection by the Administrator or any authorized representative of the National Transportation Safety Board (NTSB). In addition, the owner or operator shall present the Form 337 described in paragraph (d) of this section for inspection upon request of any law enforcement officer.

(d) When a fuel tank is installed within the passenger compartment or a baggage compartment pursuant to Part 43, a copy of the FAA Form 337 shall be kept on board the modified aircraft by the owner or operator.

Issued in Washington, DC, on July 3, 1986

William J. Sullivan,

Acting Director of Airworthiness

[FR Doc. 86–15570 Filed 7–9–86; 8:45 am]

BILLING CODE 4910–13–M

Federal Register

Thursday
July 10, 1986

Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Parts 218 and 221

Rear End Marking Device—Passenger, Commuter and Freight Trains; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 218 and 221

[Docket No. RSRM-2, Notice 2]

Rear End Marking Device—Passenger, Commuter and Freight Trains

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA is amending 49 CFR Part 221 in response to changes in railroad operations and technology developments that have occurred since initial adoption of this rule. The amendments will permit railroads greater flexibility in selecting the personnel who perform the required inspection of rear end marking devices and will accommodate recently developed telemetry devices that provide an electronic check on the marker's condition and display that information on a monitor located in the locomotive cab. In addition, FRA is adopting new procedures in Part 221 to protect non-train crew personnel who perform the inspection and making a corresponding amendment to 49 CFR Part 218. FRA is taking this action in response to technological change, to enhance railroad safety by enabling the crew to monitor the functioning of the rear end marker while the train is enroute, and in recognition of the many requests it has received for waivers of compliance that seek expansion of the categories of personnel permitted to conduct the required inspections.

DATE: These amendments are effective on August 11, 1986.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Deputy Associate Administrator for Safety, FRA, Washington, DC 20590. Telephone: 202–426–0897.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 1985, FRA issued a notice of proposed rulemaking (50 FR 35636) to respond to technological developments, operational changes, and minor deficiencies in the existing rule. The changes proposed by FRA were intended to (i) improve the regulatory language concerning the equipping and inspection provisions; (ii) revise the inspection requirement to permit it to be either a visual observation or a radio telemetry verification; (iii) permit expansion of the inspection force authorized to conduct the visual observation if they are given adequate training; and (iv) permit the use of a new procedure to protect this expanded inspection force.

Public Response

FRA received nineteen written comments and heard testimony from twenty-five witnesses during the public hearing held on October 23, 1985. Many of the comments involved topics well beyond the scope of the notice of proposed rulemaking; action on these at this time would therefore be legally impermissible. FRA has also found these out-of-scope comments to be flawed in substance. For example, several commenters suggested that FRA change the requirements relating to the rear marker device light color and/or flash rate. Some commenters, seeking to prevent alleged confusion with other wayside lighting, wanted FRA to require a "red" marker. Others wanted FRA to permit the color "white" and the decrease the required flash frequency so that the batteries powering the marker devices will have an extended life. Neither group of commenters addressed the logic on which FRA premised its initial decision on these same chromaticity and flash rate issues eight years ago or recognized the availability of devices that display a red light yet have the same battery life as other devices that display a yellow or red/orange light. Similarly, the various suggestions for regulatory change based on perceptions of current compliance with the existing rule fail to address the basic logic of the rule and appear to focus on adding redundant or impractical requirements.

Regulatory Clarification

FRA's enforcement experience has indicated that some clarification of the regulatory language would be helpful. Accordingly, FRA proposed that the initial terminal inspection practices implicit in the initial rule be made an explicit requirement so as to ensure that an inspection is made to verify the presence and operational readiness of rear marker devices at initial terminals. Since this initial terminal inspection is generally occurring at the present time, none of the commenters took exception to FRA's proposal to make this inspection and explicit requirement. However, some commenters vigorously objected to the proposed language because it could be read to require that markers be attached to the last car of every train throughout all operations on main track even though neither weather nor darkness necessitated the use of the device.

These commenters asserted that such a requirement would impose substantial new costs on the railroads. For example, the cost of operational delay (for manual repositioning of the device or additional switching) to assure that the device is on the last car would be high, particularly for trains making muiltiple enroute setoffs or pickups. The commenters argued that FRA lacked accident data showing the need to have a marker attached to the last car of all trains even during periods of daylight or good weather.

Since FRA agrees that no data justifies expansion of the display requirement, and since such a significant change was not FRA's original intent, FRA has not adopted this aspect of its proposed clarifying amendments. FRA has reworded the display language of § 221.13 to more effectively state the existing requirements of that provision.

Although not clearly articulated in this proceeding, the responses of some commenters to the display and inspection provisions of this regulation appear to reflect a growing misconception in the regulated community about the extent to which trains can be operated with defective or failed rear end marker devices. FRA is concerned that with the passage of time since the initial adoption of these rules some parties may be misconstruing the regulatory language.

Section 221.17 permits a train on which a marker has failed "enroute" to proceed to the next location where the device can be repaired or replaced. Section 221.17 does not sanction the dispatch of a train from an initial terminal with a defective marker as implied by some commenters; instead, it establishes alternative limits for the continued forward movement of a train that has already departed from its initial terminal when it experiences and reaches failure. When such a train first reaches a repair location, the railroad is obligated to install a non-defective marker at that point.

Since a rear end marker is little more than a large flashlight, its repair normally requires only the most rudimentary of repair capabilities found at virtually every railroad terminal location. Even when the marker is appended to a telemetry device that transmits air brake pressure data, this provision cannot be construed as sanctioning movement of a train with a defective marker for extensive distances because the railroad has elected to concentrate repair of these composite devices at a central location.

A train with a failed marker may not continue to move to a repair location if that would entail passing a location

where a replacement marker could be installed. Although the sophisticated electronics of the telemetry devices may warrant consolidating maintenance at a single repair facility, that consolidation decision does not excuse a railroad's obligation under § 221.17 to move a train with a defective marker no farther than the next location where the marker can be replaced. In FRA's judgement, such replacement locations include the first terminal, yard, or station the train with the defective device reaches where markers are available. This includes locations where markers are stored or kept available for use on local trains, since FRA views the degree of forward movement authorized by this section to be as limited as that prescribed for rolling equipment with safety appliance defects.

Regardless of the simplicity or complexity of the marker device, any train that experiences enroute failure is authorized to proceed only as far as the first location where either repair or replacement can be accomplished. For example, if a railroad elects not to remove or repair a marker, because it is part of composite device whose end-of-train power brake telemetry functions are still operative, and it wants to keep operating that train, its only remaining option under the rule would be to equip that train with a second marker. Consequently, a train that passes a replacement location will be in violation. FRA will consider a railroad's decision to operate a train with a failed or defective device beyond either a repair or replacement location an intentional violation of this rule. Such intentional violations will carry the maximum civil penalty.

Accommodating New Technology

FRA is adopting the proposal to permit the use of radio telemetry equipment as an alternative to visual observations. This change will make it possible for railroads to obtain full advantage of the products that have recently come on the market to monitor the condition of the rear end marker device and communicate that information through radio telemetry to a receiver located in the cab of a train's controlling locomotive. The degree of information and the sophistication of the monitoring varies and although FRA would prefer that railroads select those units that are designed to check all of the functional elements of the marker device because they guard against a wide variety of potential failure modes, FRA is not requiring them to do so in this rule. In sanctioning the use of a telemetry readout in lieu of a visual inspection, FRA has decided that the telemetry data concerning the marker's condition need not exceed the level of information obtained during the visual observation check that FRA currently requires for traditional markers. Such designs provide an effective alternative inspection method and virtually all commenters supported the FRA proposal to permit the introduction of this new technology. In fact, the only criticism of this proposal involved a reservation about possible miscommunication between devices and receivers on different trains.

Several commenters suggested that FRA revise the regulation to accommodate the use of photoelectric cells. The commenters noted that these devices are being employed to monitor ambient light conditions and to activate the marker when daylight has diminished to the point that visibility is impaired. The commenters urged that FRA indirectly sanction the use of such photoelectric cells by amending § 221.13.

Although photoelectric cells no longer represent a "new technology," their use to activate railroad rear end marking devices does represent a new use of that technology. Based on the information gathered during this regulatory proceeding, FRA has decided to accommodate the use of photoelectric cells by amending § 221.13 to establish an alternative method for determining when the rear end marking device must be illuminated. Accordingly, FRA is adopting a criterion for ambient light (1.0 candela per square meter) that will ensure illumination of the rear marker whenever daylight has been reduced to that level normally present prior to sunset and immediately after sunrise.

FRA has included in the docket the technical report that supports the selection of this threshold value for the ambient light. FRA's data indicate that the manufacturers of rear end marking devices that use photoelectric cells have all selected a threshold value that either meets or exceeds the criterion being adopted by FRA. Consequently, FRA does not foresee any adverse impact from adopting this alternative criterion. Indeed, FRA expects that use of this type of marker to have certain benefits to safety, *e.g.*, longer battery life due to reduced unnecessary illumination and a reduced need to divert railroad crews from more safety sensitive functions.

In an enforcement context, FRA will consider the foot candela threshold controlling. If, for example, a photoelectric cell-equipped marker is not illuminated one-half hour before sunset because the ambient light conditions have not diminished 1.0 candela per square meter no violation of the rule has occurred. However, it would be a rule violation where the marker is non-equipped or where the photoelectric cell is not functioning.

Increasing the Inspection Force

FRA has decided to adopt the proposed change to § 221.15(d) of the rule to permit additional employees to perform the visual marker inspection. Most of the comments that addressed this topic supported the proposal. The two commenters who objected to a change offered no substantive reason for their belief that the current rule should be retained. As pointed out by the railroads and confirmed by FRA field inspections, no unusual skill or training is needed to perform the inspection, and there is no discernible safety rationale for continuing this constraint in the face of changed operational practices. Indeed, by implicitly proscribing the use of all personnel but train crew members, the rule may in fact discourage more thorough examinations of trains.

As noted in the preamble to the NPRM, when a railroad selects noncrew members to perform this inspection (as permitted under the amended language) FRA believes the railroad must determine that such personnel are qualified to accomplish this task. Even though minimal skill and ability are involved in the tasks, there is a need to know that the individual performing the tasks knows the proper safety procedures to follow when in close proximity to rolling equipment. In addition, the person needs to have effective communications with the train crew so that personal notification can be accomplished. If a railroad chooses to use radio communications for this purpose, these personnel must be properly schooled in the use of radios.

Alternative Methods of Protection: "Blue Signal Rule"

FRA's proposal to establish an alternative means of protecting individuals performing the task of covering a photoelectric cell or repositioning an activation switch generated many commenters. An understanding of the commenters' positions requires an explanation of the context in which the issue of blue signal protection arises.

Source of the Controversy

As indicated in the NPRM, the existing rule requires that a member of the train crew conduct the enroute inspection prescribed by § 218.15. This limitation on the potential inspection force had always been a subject of controversy, and it became an important

compliance issue for railroads when they began implementing a 1982 collective bargaining agreement sanctioning the elimination of approximately 25 percent of their cabooses from through freight trains.

In the absence of a caboose at the rear of the train all crew members are riding the locomotive consist at the front of the train. Unless that cabooseless train is equipped with a telemetry device that monitors the condition of the marker, it would be necessary for a train crew member to travel to the rear of the train to inspect the marker and return to the front of the train before the train could depart.

FRA's proposal to modify § 221.15 to permit railroads to use personnel other than train crew members to inspect the rear marker device would allow railroads to avoid the delay and costs inherent in such a train crew inspection. It would also enhance the safety of train operations by enabling the crew to monitor the functioning of the rear end marker enroute. For the railroads, expansion of the inspection force has one drawback: Non-train crew inspectors are entitled to blue signal protection, which involve some degree of economic burden. After examining the simple nature of this inspection task, FRA decided to reassess the need for the high level of protection provided by full compliance with the blue signal regulation in the narrow context of this rule.

FRA concluded that, if the tasks were restricted, the locations limited, and effective communications established, it would be possible to sanction an alternative means of protection that was the functional equivalent of full compliance with the existing rule. Accordingly, FRA has so amended § 221.16.

Commenters' Focus

Most of the commenters who addressed the issue of alternative protection asserted that the FRA Blue Signal regulation simply does not apply to workmen performing *any* task associated with a marker device on the theory that the device is on the last car of the train and is thereby categorically not "between" cars so as to trigger the rules protection. If a commenter conceded that the rule applied, the commenter generally asserted that such tasks fitted within the footnote concept of "servicing" that is exempted from the rule.

The commenters urged that FRA avoid any further problems in this area by expanding the proposed alternative protection concept in several ways. Initially they suggest that FRA expand the locations where this alternative can be employed to include "departure," "through freight," and "designated" tracks and that the permissible tasks involving marker devices include installation, repositioning, checking, repairing, and replacement. Finally, they suggest that FRA apply the same approach to all similar tasks involving a different device, the end-of-train telemetry device.

FRA Analysis

FRA began its analysis of the comments by focusing on the assertion that the blue signal rules are not applicable to any of the tasks associated with rear marker devices. FRA categorically rejected that assertion because it runs counter to established industry practice, the regulatory history of the blue signal provisions, and FRA's longstanding, consistent interpretation of these provisions.

Since the late 1880s, individual railroads have had an operating rule that was designed to protect certain types of workmen while they are performing particular tasks involving rolling equipment. The individual carrier formulations of such rules subsequently were translated into the Standard Code of Operating Rules. Developed by the Association of American Railroads as a set of model operating rules for its members, the Standard Code of Operating Rules (AAR Code) has long contained a formulation of that rule which is commonly referred to as "Rule 26" or the "Blue Flag Rule." Using the AAR Code as a guideline, each railroad constructed, interpreted and applied its individual rules on this topic as it saw fit according to the circumstances under which it operated.

Although there was no absolute consistency between individual railroads concerning this industry rule, there is ample evidence to support the conclusion that when a workman such as a carman was required to position himself between the rails while working on a single car or a group of cars he was universally considered to be "afoul" of the equipment. Accordingly, the equipment should be protected with blue flags in order to warn other railroad workers that a person was in a position to be injured if the protected equipment was moved. Tasks such as replacing an airhose or the knuckle of a coupler were normally deemed to be the type of task that entitled a carman to invoke the protection afforded by Rule 26.

The significant individual carrier variations in the application, interpretation, and observance of the AAR's model rule resulted in confusion and uncertainty in the industry, which in turn contributed to a number of serious injuries and fatalities. FRA concluded that the situation warranted the development of a Federal regulation to resolve the safety problems presented by the lack of uniformity in the industry. FRA's regulatory effort began with an advance notice of proposed rulemaking issued in January 1974 and was not concluded until the adoption of a final rule on January 10, 1979 (44 FR 2175).

Among the more difficult aspects of drafting an appropriate rule was selecting precise descriptive language that reflected the basic concept of when protection should be afforded without being unduly restrictive or overly legalistic. Rather than use the industry term, "afoul of the equipment," FRA initially proposed to require blue signal protection for workmen who were "under, on or about" rolling equipment (40 FR 30195). FRA's proposed formulation was changed at the adoption of the initial final rule (41 FR 10904). FRA noted that it was attempting to respond to commenter concern that the word "about" was too ambiguous and explained:

> The basic intent of the rule is to protect a workman in such close proximity to rolling equipment that movement of such equipment could result in contact between the workman and the equipment causing serious personal injury. This "danger zone" would include any situation in which a workman was on or under or between two pieces of equipment. To clarify this intent, the language has been revised to read "on, under, or between".

With respect to "between," FRA did not adopt a requirement of some close physical proximity of the two pieces of equipment. No party to that FRA proceeding had suggested that either the FRA rule or its industry predecessors would be triggered only when other equipment was in immediate proximity to the equipment being worked on. It was irrelevant for all parties whether the workman was performing a task on the end of a car that was coupled to another car or was working on the only car standing on that track. The critical issue was whether the person was inside the clearance line of the equipment and particularly whether the person was within the gauge of the rail. If the person was so positioned, that person was at risk and would be entitled to protection. Consequently, FRA rejects all commenter assertions that tasks being performed on the last car of a train are categorically exempt from the rule because the worker is not "between" two pieces of rolling equipment that are in close physical proximity.

Indeed, both FRA and the parties to the prior rulemaking proceeding recognized how restrictively the rule could be applied, because they attempted to accommodate valid industry concerns that the rule not be read to include a brief list of tasks that historically had not been perceived as warranting this type of protection. These discrete tasks, which demand for example that a worker be "on" the equipment, but which only involve "housekeeping" functions such as supplying drinking water, ice or sanitary supplies, were specifically excluded from the ambit of the rule when FRA added a footnote to the applicability section of the rule (§ 218.21) to exempt these discrete "servicing" tasks from the scope of the rule. In addition to this footnote, FRA augmented the rule with a set of written interpretations that were furnished to all railroads so as to ensure that all concerned parties would have a uniform understanding.

Thus, FRA's position has uniformly been that when a workman positions himself within the clearance lines of rolling equipment, and particularly when he is within the gage of the rail, that person is exposed to risk from the unexpected movement of the equipment and is entitled to protection. Accordingly, FRA has been requiring that personnel working on markers mounted on couplers or drawbars be given the protection required under Part 218. FRA considered altering its position only when FRA concluded that the marker inspection task could be limited to certain discrete actions that would minimize the nature of the person's risk exposure and its duration. Once that conclusion had been reached, FRA knew that a regulatory change would be required and issued the FPRM in this proceeding proposing adoption of an alternative method of protection.

Regardless of their assertions concerning the applicability of the blue signal regulation, the commenters who addressed the issue approved of FRA's concepts for the alternative method of protection and urged expansion of its use. The first suggested expansion was the locations at which this alternative could be used. Basically, the commenters wanted to be able to use the alternative methodology at any location where they anticipate having to inspect on other than main track. Neither a uniform nomenclature for such track nor a unifying principle for identifying such track can be discerned from the comments. In addition, the various track designations being offered all appear to lack the primary characteristic of main track (operational limitations) that FRA identified in the NPRM as being a key ingredient in providing the equivalent level of protection.

Based on this analysis, FRA does not believe that there is an effective way to expand the locations in a regulatory context. If a particular railroad employs a systemwide designation for tracks that are used for this inspection purpose, and if the operational constraint characteristic identified in the NPRM is provided on such tracks, that railroad may have a valid basis for seeking a waiver of compliance to expand the use of this alternative protection methodology.

A few commenters expressed concern that FRA's wording of the alternative protection methodology was unduly restrictive in that it precludes the relaying of information about a completed inspection and prevents the use of qualified personnel such as hostlers from substituting for engineers in the cab of the locomotives. FRA agrees with the commenters and is acting accordingly in adopting the wording of the final rule.

FRA has not adopted the suggestion of several commenters that the alternative protection methodology be revised to include a number of tasks associated with the end-of-train telemetry devices. In addition to being legally beyond the scope of the notice of proposed rulemaking in this proceeding, such an expansion is not justifiable from a safety perspective. As noted, FRA's willingness to consider an alternative was in part premised on the minor nature of the task and the short duration of the person's exposure to risk. Expansion of the permissible tasks to include installation, repositioning, repair, or replacement of the relatively heavier, more awkward telemetry device, which clearly entail longer periods of risk exposure, would reduce the margin of safety to a level that would have been unacceptably low even under the older private industry practices.

Section-By-Section Analysis

Section 221.5

FRA is adopting this section as proposed. The new definition reflects the expansion of the inspection force that FRA is sanctioning under proposed § 221.15 and the new procedures that FRA is sanctioning under § 221.16. FRA will consider an individual to be a member of the expanded inspection force to be "qualified" only when they have been given adequate training concerning the task they are being asked to perform. The degree of instruction needed will vary according to the type of experience the worker has had, but since new procedures are involved here, FRA believes that some training must be given to all non-train crew personnel before such a person can legally perform this task.

Section 221.13

FRA proposed to reword both paragraphs (a) and (b) to eliminate the inartful draftsmanship of the existing provision. For the reasons stated earlier, FRA has decided not to amend this section as proposed, but to amend the section to accommodate the increasing use of photoelectric cells by establishing an ambient light criterion for marker illumination.

Section 221.14

FRA proposed to transfer the provisions previously contained in § 221.15 to this newly designated section, except for the requirement in paragraph (d), for train crew inspection at enroute crew change points, which would be left in § 221.15. FRA has adopted that change and some nonsubstantive editorial improvements.

Section 221.15

FRA proposed to rewrite this section to retain the prior requirement that rear markers be inspected at enroute crew change locations; to make explicit the requirement for an initial terminal inspection of the device; to accommodate possible telemetry inspection; and to permit the railroads to select individuals other than train crew members to conduct the inspection. With the exception of the proposal to explicitly require initial terminal inspections and with a few minor changes, FRA has adopted this section as proposed.

Although not commented on by parties responding to the NPRM, FRA reiterates its intent to ensure that the railroads only use personnel that the railroad has determined are qualified to perform this inspection in terms of their familiarity with the equipment, the inspection task, and the appropriate procedures to be followed to obtain the needed levels of personal safety when in such proximity to rolling equipment. In FRA's judgment, this will necessitate some training for all affected railroad employees and may require equipping some personnel with a communications capability that they do not currently possess.

Section 221.16

FRA is adopting the proposal to add an entirely new provisions to the rule to

allow railroads to conduct the required inspection in an expeditious fashion. As noted earlier, the industry's rule historically was intended to alert train crews to the fact that a non-crew member was in a position that exposed that worker to serious danger if the protected equipment was moved. The FRA rule, like the industry rule, recognizes that crew members work as a unit and know one another's whereabouts. As consequence, the industry rule exempted members of the train crew from blue signal protection and FRA adopted the same exception. FRA's alternative protection methodology, which requires that the person occupying the cab compartment of the controlling locomotive have an effective communications link to the inspector, assures the inspector that the train is secure against movement and will remain that way until the inspection has been completed. In FRA's judgment, this alternative provides the inspector with the same status and protections as a member of the train crew and, for the same reasons, so minimizes the risk of injury that it is appropriate to authorize the inspection without blue signal protection. FRA believes that this new alternative inspection method, in addition to not having any adverse safety implications, will reduce the economic burden for railroads by affording them some additional flexibility. This alternative method of protection is limited to "main track" (defined in § 221.5(d)), since only there do the operating rules serve to prevent other trains from occupying the track where the person needing protection will be stationed. This procedure will usually demand that both the locomotive engineer and the inspector be equipped with operating radios. The locomotive will have to be occupied during the inspection to preclude movement before the task is completed. In adopting this section, FRA has reworded the cab-occupant provision in response to commenters' suggestions that the hostlers also be permitted to occupy the locomotive cab. FRA has made this change because hostlers, who are normally employed in terminal areas to move locomotive consists for servicing, are also qualified to ensure that inadvertent movement of the train will not occur during the inspection.

Although FRA considers this inspector to be functionally a member of the train crew, this amendment does not sanction any activity beyond either covering a photoelectric cell or repositioning the marker's activation switch. Under the rule as amended, if a railroad wants to have battery readings taken, devices repaired, replaced, repositioned or otherwise given additional attention, or if other work is to be performed that is not related to the marker device, then the railroad must continue to fully comply with the blue signal provisions of Part 218.

In adopting this section, FRA has made some editorial changes. One significant change was to eliminate the requirement that the inspection results only be communicated by the inspector to the engineer to the departing train. The reworded section now requires only that the engineer of the departing train crew be personally advised of the inspection findings, thereby sanctioning the relaying of inspection findings to the new train crew by a third party.

Section 218.5

FRA proposed to make a corresponding change to the blue signal rules contained in Part 218. That change is being adopted and alters the language of the footnote to the definitions section of Part 218 to reflect the existence and relevance of this new inspection procedure. In adopting the revisions to this regulation that occurred in 1979, FRA explicitly set forth in the footnote to § 218.5(a) the very narrow tasks that could be performed without providing a workman with protection. Since the task being performed during the marker inspection is primarily an operational test of the device and/or a visual check, FRA is proposing to revise the portion of the footnote relating to "testing" to reflect this new procedure.

Appendix C

To reflect the amendments made by this final rule, FRA is revising the schedule of civil penalties in Appendix C.

Regulatory Impact

This final rule has been evaluated in accordance with existing regulatory policies. It is neither a "major" rule under Executive Order 12291 nor a "significant" rule as defined under DOT policies and procedures.

The rule will not increase the economic burden of the existing regulation and has the potential for reducing the cost of compliance since it provides the railroads with alternative means of complying with an existing rule. Although FRA is constrained in its analysis by the absence of well defined industry-wide economic data, FRA has prepared and placed in the rulemaking docket an economic analysis addressing the impact of the final rule. FRA's analysis of the economic impact of the proposed rule was generally accepted as accurate by the commenters and has not been altered by the changes being made in adopting the final rule. It can be inspected or copied at Room 8201, 400 Seventh Street, SW., Washington, DC. Copies can also be obtained from the Docket Clerk, FRA, at the same address.

FRA's economic evaluation identifies total estimated benefits from avoidance of train delays to be $9,802,000 per year. The total first-year costs, attributable to the purchase and installation of telemetry devices, that can be associated with the rule changes are estimated at $1,370,000. These amounts are annual averages from a 20 year forecast that uses a 10 percent discount rate. The benefit to cost ratio for the entire forecast period would be 7 to 1. Although this cost benefit ratio is conservative for a number of reasons, it necessarily simplifies the multiple variables that each railroad will have to consider in analyzing the economic and safety benefits to be realized in the context of its specific operating environment when a responding to this rule change.

In the NPRM, FRA specifically requested that commenters provide information on the question of the economic impact of the proposed rule. The only major difference between the FRA estimate and the commenters' estimates of costs that could be associated with the proposed changes involved costs stemming from the daylight display of the marker during switching operations and from the delay inherent in additional enroute inspections. Since FRA has decided not to adopt the proposed changes that would have caused the imposition of those costs, and since the commenters have validated the accuracy of FRA's initial economic impact which did not include the costs associated with daylight operations, FRA believes that its revised economic impact analysis is reliable.

Since the rear marker regulation only applies to railroads and exempts from compliance small railroads that only operate one train at a time, the amendments contained in this final rule will have no economic impact on those railroads. To the degree that any small railroad must comply with this regulation, this final rule will not have an adverse economic impact since it permits them greater discretion. Based on the facts set forth in this final rule, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Although FRA initially thought that there could be indirect information

collection requirements associated with the NPRM, and stated in the NPRM that these information collection requirements in the proposed rule would be submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), subsequent investigation revealed that these changes do not impose new information collection requirements and will not modify any existing ones.

Environmental Impact

On June 16, 1980, FRA published (45 FR 40850) revised procedures for ensuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321*et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1C. These FRA procedures require that an "environmental assessment" be performed prior to all major FRA actions.

The FRA environmental procedures also contain a provision that enumerates seven criteria which, if met, demonstrate that a non-categorically exempt action is not a "major" action for environmental purposes. These criteria involve diverse factors, including the availability of adequate relocation housing; the possible inconsistency of the action with Federal, State or local law; the possible adverse impact on natural, cultural, recreational, or scenic environmentals; the use of properties covered by section 4(f) of the DOT Act; and the possible increase in traffic congestion. This final rule meets the seven criteria that establish an action as non-major.

List of Subjects

49 CFR Part 221

Railroad safety, Rear end marking devices.

49 CFR Part 218

Railroad safety, Railroad operating practices.

In consideration of the foregoing, FRA is amending Part 221 and Part 218, Title 49, Code of Federal Regulations, as set forth below:

The Final Rule

1. The authority for Part 221 and Part 218 revised to read as follows:

Authority: Secs. 202 and 209, Pub. L. No. 91–458, 84 Stat. 971 and 975, as amended (45 U.S.C. 431, 438) and 49 CFR 1.49.

PART 221—[AMENDED]

2. Section 221.5 is amended by adding a new paragraph (i) to read as follows:

§ 221.5 Definitions.

* * * * *

(i) "Qualified person" means any person who has the skill to perform the task and has received adequate instruction.

3. Section 221.13 is revised to read as follows:

§ 221.13 Marking device display.

(a) During the periods prescribed in subparagraph (b) of this section, each train to which this part applies that occupies or operates on main track shall (1) be equipped with, (2) display on the trailing end of the rear car of that train, and (3) continuously illuminate or flash a marking device prescribed in this subpart.

(b) Unless equipped with a functioning photoelectric cell activation mechanism complying with subparagraph (c) of this section, the marking devices prescribed by this subpart shall be illuminated continuously or flash during the period between one hour before sunset and one hour after sunrise, and during all other hours when weather conditions so restrict visibility that the end silhouette of a standard boxcar cannot be seen from ½ mile on tangent track by a person having 20/20 corrected vision.

(c) Marking devices prescribed by this part and equipped with a functioning photoelectric cell activation mechanism shall illuminate or flash the device continuously when there is less than 1.0 candela per square meter of ambient light.

(d) The centroid of the marking device must be located a minimum of 48 inches above the top of the rail.

4. Section 221.15 is redesignated as § 221.14 and is revised to read as follows:

§ 221.14 Marking devices.

(a) As prescribed in § 221.13, passenger, commuter and freight trains shall be equipped with at least one marking device, which has been approved by the Federal Railroad Administrator in accordance with the procedures included in Appendix A of this part, and which has the following characteristics:

(1) An intensity of not less than 100 candela nor more than 1000 candela (or an effecitve intensity of not less than 100 candela nor more than 1000 candela for flashing lights) as measured at the center of the beam width:

(2) A horizontal beam with a minimum arc width of fifteen (15) degrees each side of the vertical center line, and a vertical beam with a minimum arc width of five (5) degrees each side of the horizontal center line as defined in terms of the 50 candela intensity points;

(3) A color defined by the red-orange-amber color range; and

(4) If a flashing light is used, a flash rate of not less than once every 1.3 seconds nor more than once every .7 seconds.

(b) Marking devices used on passenger and commuter trains in compliance with paragraph (a) of this section shall be lighted under the conditions prescribed in §§ 221.13 (b) and (c).

(c) When a locomotive is operated singly, or at the rear of a train, highly visible marking devices may be provided by the use of:

(1) At least one marking device that complies with paragraph (a) of this section; or

(2) At least one illuminated red or amber classification light on the rear of the locomotive, provided it complies with paragraph (a) of this section; or

(3) The rear headlight of the locomotive illuminated on low beam.

5. Add a new § 221.15 to read as follows:

§ 221.15 Marking device inspection.

(a) Each marking device displayed in compliance with this part shall be examined at each crew change point to assure that the device is in proper operating condition.

(b) This examination shall be accomplished either by visually observing that the device is functioning as required or that the device will function when required by either (1) repositioning the activation switch or (2) covering the photoelectric cell.

(c) This examination shall be conducted either by the train crew or some other qualified person, provided that, if a non-train crewmember performs the examination, that person shall communicate his or her findings to the locomotive engineer of the new train crew.

(d) When equipped with a radio telemetry capability, a marker displayed in accordance with this part may be examined by observing the readout information displayed in the cab of the controlling locomotive demonstrating that the light is functioning as required in lieu of conducting a visual observation.

6. Add a new § 221.16 to read as follows:

§ 221.16 Inspection procedure.

(a) Prior to operating the activation switch or covering the photoelectric cell when conducting this test, a non-train crew person shall determine that he is

being protected against the unexpected movement of the train either under the procedures established in part 218 of this chapter or under the provisions of paragraph (b) of this section.

(b) In order to establish the alternative means of protection under this section, (1) the train to be inspected shall be standing on a main track; (2) the inspection task shall be limited to ascertaining that the marker is in proper operating condition; and (3) prior to performing the inspection procedure, the inspector shall personally contact the locomotive engineer or hostler and be advised by that person that they are occupying the cab of the controlling locomotive and that the train is and will remain secure against movement until the inspection has been completed.

7. Part 221, Appendix C is revised to read as follows:

Appendix C—Schedule of Civil Penalties

Appendix C reflects a statement of policy by the Federal Railroad Administration in making applicable to Part 221 a specific civil penalty schedule for violations of this Part.

	Violation	Intentional violation[1]
Section 221.13	750	1,500
Improper location	1,000	2,500
Device not present	1,500	2,500
Section 221.14:		
Use of unapproved device	500	1,000
Use of device with improper intensity, beam width, color, flash rate	500	1,000
Section 221.15:		
Failure to inspect at crew change	750	1,500
Improper inspection	750	1,500
Section 221.16:		
Failure to obtain protection	750	2,000
Improper protection	750	1,500
Section 221.17: Excessive movement after enroute failure	1,000	2,000

[1] For the purposes of this schedule, an intentional violation is the knowing and willful failure to a carrier or its officers or agents to comply with the provisions of this part. The Administrator reserves the authority to assess the maximum penalty for a violation of any section or subsection contained in Part 221.

PART 218—[AMENDED]

8. In § 218.5, the note to paragraph (a) is revised to read as follows:

§ 218.5 Definitions.

(a) * * *

Note: "Servicing" does not include supplying cabooses, locomotives, or passenger cars with items such as ice, drinking water, tools, sanitary supplies, stationery, or flagging equipment.

"Testing" does not include (i) visual observations made by an employee positioned on or alongside a caboose, locomotive, or passenger car; or (ii) marker inspections made in accordance with the provisions of § 221.16(b) of this chapter.

(Authority: Sec. 202, 84 Stat. 971 (45 U.S.C. 431); sec. 1.49(m) of the Regulations of the Secretary of Transportation (49 CFR 1.49(m)).

Issued in Washington, DC on July 7, 1986.

John H. Riley,

Administrator.

[FR Doc. 86-15571 Filed 7-9-86; 8:45 am]

BILLING CODE 4910-06-M

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