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

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WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC

WHEN: June 9, at 9 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
RESERVATIONS: Gertrude E. Belton, 202–523–5237

CHICAGO, IL

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

BOSTON, MA

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

Contents

Federal Register

Vol. 52, No. 98

Thursday, May 21, 1987

Agriculture Department
See also Federal Crop Insurance Corporation; Soil Conservation Service
NOTICES
Agency information collection activities under OMB review, 19180

Army Department
See also Engineers Corps
NOTICES
Military traffic management:
International/domestic rate application for personal property shipments, 19192

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Georgia, 19181

Coast Guard
RULES
Regattas and marine parades:
Put In Bay Air Show, 19138
PROPOSED RULES
Drawbridge operations:
Georgia, 19172
Maryland, 19173
Ports and waterways safety:
York Spit Channel, Chesapeake Bay; regulated navigation area, 19173

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Dominican Republic, 19190
Export visa requirements; certification, waivers, etc.:
Hong Kong, 19191

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Board of Trade—
Long term Japanese government bond futures, 19192

Defense Department
See Army Department; Defense Logistics Agency; Engineers Corps; Navy Department

Defense Logistics Agency
NOTICES
Privacy Act:
Computer matching program, 19192

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Metro Atlanta Area Water Resource Study, 19194

Environmental Protection Agency
RULES
Hazardous waste program authorizations:
Alabama, 19140
Vermont, 19139
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Massachusetts, 19175
NOTICES
Toxic and hazardous substances control:
Confidential business information—
Chemical Abstracts Service et al., 19197

Executive Office of the President
See Presidential Documents; Trade Representative, Office of United States

Farm Credit Administration
RULES
Farm credit system:
Borrower rights; effective date, 19129
Farm Credit System Capital Corp.—
Charter and organization; effective date, 19129

Federal Aviation Administration
RULES
Air traffic rules, special:
Special airport traffic area; Portland International Airport, Portland, OR, 19254
Airworthiness directives:
Boeing Vertol Co. et al., 19130
Control zones, 19132
Control zones and transition areas; correction, 19132
Transition areas, 19132
PROPOSED RULES
Airworthiness directives:
Boeing, 19168
NOTICES
Organization, functions, and authority delegations:
West Chicago, IL, 19225

Federal Communications Commission
NOTICES
Common carrier services:
Hearing impaired and other disabled people; reasonable access to telecommunications services, 19198

Federal Crop Insurance Corporation
RULES
Administrative regulations:
Food Security Act; implementation; benefits denial, 19126

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 19229

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Arkansas Power & Light Co., 19195, 19196 (2 documents)
California Sportfishing Protection Alliance et al., 19196
Radford, VA, 19197
Southern California Edison Co., 19197

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
San Mateo County, CA, 19225
St. Louis & St. Charles Counties, MO, 19226
St. Charles County, MO, 19225

Federal Reserve System
NOTICES
Agency information collection activities under OMB review, 19198
Meetings; Sunshine Act, 19229 (2 documents)
Applications, hearings, determinations, etc.:
Central Wisconsin Bankshares, Inc., 19199
Hometown Bancorporation, Inc., 19200
Jennings, John C., et al., 19199

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Great Swamp National Wildlife Refuge Master Plan, 19212

Food and Drug Administration
PROPOSED RULES
Food for human consumption:
Pineapple juice; standards consideration, 19169
NOTICES
Food for human consumption:
Identity standard deviation; market testing permits—
Pacific salmon, canned, 19202 (2 documents)
Meetings:
Advisory committees, panels, etc., 19200

General Services Administration
NOTICES
Property management:
Wildlife order conveyance—
Golden Gate Road, Osceola County, FL, 19200

Health and Human Services Department
See Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health; Public Health Service; Social Security Administration

Health Resources and Services Administration
See also Public Health Service
NOTICES
Meetings; advisory committees:
June, 19203

Indian Affairs Bureau
NOTICES
Judgment funds; plans for use and distribution:
Rincon Band of Mission Indians, 19205

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Procedure and administration:
Returns required on magnetic media, 19136

International Boundary and Water Commission, United States and Mexico
NOTICES
Environmental statements; availability, etc.:
New River at Calexico, CA and Mexicali, Baja California water improvement project, 19213

International Trade Administration
NOTICES
Antidumping:
Paint filters and strainers from Brazil, 19181
Countervailing duties:
Paint filters and strainers from Brazil, 19184
Applications, hearings, determinations, etc.:
State University of New York et al., 19189

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Merchants Grain & Transportation, Inc., 19214
Wisconsin & Calumet Railroad Co., Inc., 19214
Railroad services abandonment:
Chicago & North Western Transportation Co., 19214

Justice Department
See also Juvenile Justice and Delinquency Prevention Office
RULES
Organization, functions, and authority delegations:
Law Enforcement Officers; search warrant issuance, 19137
NOTICES
Pollution control; consent judgments:
Kurdziel Iron Industries, Inc., 19214
Privacy Act; systems of records, 19215

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements:
Minorities in the juvenile justice system, 19248

Land Management Bureau
NOTICES
Airport leases:
Nevada, 19206
Environmental statements; availability, etc.:
Idaho Falls District, ID, 19206
Land use plans:
Burns District, OR, 19207
Management framework plans, etc.:
California, 19207
Meetings:
Albuquerque District Advisory Council, 19207
Roswell District Advisory Council, 19208
Oil and gas leases:
Alaska, 19208
Realty actions; sales, leases, etc.:
Arizona, 19208
California, 19208–19209

(3 documents)
Colorado, 19210
Nevada, 19210
Oklahoma, 19211
Oregon, 19211

Legal Services Corporation
PROPOSED RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 19176

Maritime Administration
NOTICES
Applications, hearings, determinations, etc.:
Lykes Bros. Steamship Co., Inc., 19226

Mexico and United States, International Boundary and Water Commission
See International Boundary and Water Commission, United States and Mexico

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
Tenneco Oil Exploration & Production, 19212

National Credit Union Administration
PROPOSED RULES
Freedom of Information Act; implementation:
Uniform fee schedule and administrative guidelines, 19152

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Air brake systems, 19179

National Institutes of Health
NOTICES
Meetings:
Recombinant DNA Advisory Committee, 19204
Research Resources National Advisory Council, 19204

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Mexico shrimp, 19147
Ocean salmon off coasts of Washington, Oregon, and California, 19149
NOTICES
Coastal zone management programs and estuarine sanctuaries:
State programs—
Maryland, 19190
Permits:
Marine mammals, 19190

Navy Department
NOTICES
Meetings:
Chief of Naval Operations Executive Panel Advisory Committee, 19194
(2 documents)
Naval Research Advisory Committee, 19194, 19195
(3 documents)

Office of United States Trade Representative
See Trade Representative, Office of United States

Personnel Management Office
RULES
Retirement:
Career civilian FAA employees' retirement coverage continuation following airport lease to Metropolitan Washington Airports Authority, 19125
Federal Employees Retirement System—
Employee transfers from Civil Service Retirement System, 19232
General administration and provisions, 19242
PROPOSED RULES
Health benefits, Federal employees:
Credit for CHAMPUS coverage for the purpose of continuing an FEHB enrollment during retirement, 19151
Retirement:
Civil Service Retirement and Disability Fund; employee and annuitant deductions and agency contributions, 19150

Postal Rate Commission
RULES
Practice and procedure rules:
Domestic Mail Classification Schedule; third class maximum size change, 19139

Presidential Documents
PROCLAMATIONS
United States Ship Stark; death of American servicemen on board (Proc. 5659), 19257

Public Health Service
See also Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health
RULES
Grants:
Dentistry general practice, residency training, 19144
Nursing student loan program, 19142
NOTICES
Meetings; advisory committees:
June, 19200

Railroad Retirement Board
RULES
Railroad vacancy and hiring requirements, 19133

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 19229
(2 documents)
Applications, hearings, determinations, etc.:
Bankers Security Life Insurance Society et al., 19219
Public utility holding company filings, 19221
Tax-Exempt Equity Fund, Inc., 19224

Small Business Administration
PROPOSED RULES
Business loan policy:
Small business lending companies; loan guarantees, 19155
Program Fraud Civil Remedies Act; implementation, 19156

Social Security Administration
RULES
Social security benefits:
Deceased beneficiary; underpayment entitlement prohibition, 19135

PROPOSED RULES
Social security benefits, etc.:
Own-motion review of fee determinations, 19169

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Elton Creek, NY, 19180
Gilmantown Roadbank, NY, 19180
Wolf Creek Road, NY, 19181

State Department
NOTICES
Meetings:
International Radio Consultative Committee, 19224
International Telegraph and Telephone Consultative Committee, 19224, 19225
(2 documents)

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program submission:
Montana, 19171

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
Articles eligible for duty-free treatment, etc., 19216
Import quotas and exclusions, etc.:
Specialty steel import relief, 19218

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; Maritime Administration; National Highway Traffic Safety Administration

Treasury Department
See also Internal Revenue Service
NOTICES
Notes, Treasury:
Y-1989 series, 19227

United States Information Agency
NOTICES
Meetings:
Cultural Property Advisory Committee, 19228

Veterans Administration
PROPOSED RULES
Vocational rehabilitation and education:
Payments to dependents of veterans in training under Chapter 31, Title 38 United States Code (rehabilitation program), 19174

Separate Parts In This Issue

Part II
Office of Personnel Management, 19232

Part III
Office of Personnel Management, 19242

Part IV
Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 19248

Part V
Department of Transportation, Federal Aviation Administration, 19254

Part VI
The President, 19257

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
5659 19257

5 CFR
831 19125
841 19242
846 19232
Proposed Rules:
831 19150
890 19151

7 CFR
400 19126

12 CFR
611 19129
614 19129
Proposed Rules:
790 19152

13 CFR
Proposed Rules:
120 19155
142 19156

14 CFR
39 19130
71 (3 documents) 19132
93 19254
Proposed Rules:
39 19168

20 CFR
359 19133
404 19135
Proposed Rules:
404 19169
410 19169
416 19169

21 CFR
Proposed Rules:
146 19169

26 CFR
301 19136

28 CFR
60 19137

30 CFR
Proposed Rules:
926 19171

33 CFR
100 19138
Proposed Rules:
117 (2 documents) 19172, 19173
162 19173

38 CFR
Proposed Rules:
21 19174

39 CFR
3001 19139

40 CFR
271 (2 documents) 19139, 19140
Proposed Rules:
52 19175

42 CFR
57 (2 documents) 19142, 19144

45 CFR
Proposed Rules:
1602 19176

49 CFR
Proposed Rules:
571 19179

50 CFR
658 19147
661 19149

Rules and Regulations

Federal Register
Vol. 52, No. 98
Thursday, May 21, 1987

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Continuation of Retirement Coverage After the Leasing of Two Local Airports

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comment.

SUMMARY: The Office of Personnel Management (OPM) is issuing regulations on the continuation of civil service retirement coverage and benefits for career civilian employees of the Federal Aviation Administration permanently assigned to Washington National Airport and Dulles International Airport following the lease of the airports to the Metropolitan Washington Airports Authority.

DATES: Interim regulations effective May 1, 1987. Comments must be received on or before July 20, 1987.

ADDRESSES: Send written comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John A. Elliott, (202) 632–4682.

SUPPLEMENTARY INFORMATION: These regulations are required by Pub. L. 99–591 (enacted October 30, 1986), which gave the Secretary of Transportation authority to lease Washington National Airport and Dulles International Airport to the Metropolitan Washington Airports Authority for 50 years. As part of this legislation, civilian employees of the Federal Aviation Administration permanently assigned to the two airports, who became employees of the Authority without a break in service, retained their civil service retirement coverage and benefits. These employees have the same retirement coverage as if they were still employed by the Federal Government. Regulations on retaining coverage under the Fedeal Employees Retirement System will be issued separately.

Employee Deductions

Payroll deductions for the employee contribution to the Civil Service Retirement and Disability Fund are the same as if the employees were still employed by the Federal Government.

OPM and Airports Authority Responsibilities

OPM and the Metropolitan Washington Airports Authority signed an agreement that spells out their respective responsibilities. Their responsibilities are the same as exists between OPM and any employing agency with respect to the retirement system. For the Authority, this includes withholding employee deductions and making the required 7 percent employer contributions into the Civil Service Retirement and Disability Fund.

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

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days because the leasing of the airports will occur soon and the concerned parties need time to make the arrangements for handling the retirement system. The regulations are effective May 1, 1987.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entitles because these regulations concern administrative practices and will affect only a small number of Federal employees and a single independent local agency.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending Part 831 of title 5 of the Code of Federal Regulations as follows:

PART 831—RETIREMENT

1. The authority citation for Subpart C of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

2. Subpart C is amended to add a new § 831.308 to read as follows:

Subpart C—Credit for Service

§ 831.308 Continuation of service credit for employees of the Metropolitan Washington Airports Authority.

(a) Permanent Federal Aviation Administration employees assigned to Washington National Airport or Dulles International Airport who elect to transfer to the Metropolitan Washington Airports Authority, retain their retirement coverage under subchapter III of chapter 83 of title 5, United States Code.

(b) *Eligibility requirements.* To be eligible for continuation of retirement coverage, an employee must (1) be a permanent Federal Aviation Administration employee assigned to the Metropolitan Washington Airports who elects to transfer to the Airports Authority; (2) be subject to subchapter III chapter 83 of title 5 United States Code on the day before the date the lease takes effect; and (3) become continually employed by the Airports Authority without a break in service. A "break in service" means a separation from employment of at least 3 calendar days.

(c) *Employee deductions.* Employees of the Airports Authority who have continuing coverage under title 5 retirement provisons are deemed to consent to deductions from their basic pay for the Civil Service Retirement and Disability Fund. The amounts deducted will be the same as if the employees were still employed by the Federal

Government. The Airports Authority must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund the amounts deducted from an employee's pay.

(d) *Employer contributions.* The Airports Authority must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund amounts equal to any agency contributions that would be required for employees covered by the Civil Service Retirement System.

(e) *Sick leave.* An employee who retires, or dies leaving a survivor entitled to an annuity, from the Airports Authority within the 5 year period beginning on the date the lease takes effect will be permitted to credit unused sick leave in his or her annuity computation. After the 5 year period, use of unused sick leave in the annuity computation will be permitted if the employee is under a formal leave system as defined in § 831.302.

[FR Doc. 87–11688 Filed 5–20–87; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 4133S]

Food Security Act of 1985; Implementation

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts as a final rule, with amendments as described herein, the interim rule published in the **Federal Register** on August 15, 1986 (51 FR 29202). The interim rule amended 7 CFR Part 400, General Administrative Regulations, by adding a new Subpart F, to be known as 7 CFR Part 400, Subpart F—Food Security Act of 1985, Implementation; Denial of Benefits. The intended effect of this rule is to confirm the interim rule published in the **Federal Register** on August 15, 1986 at 51 FR 29202, to: (1) Deny crop insurance benefits to, (a) persons convicted of violations of Federal and State controlled substance statutes, (b) persons producing an agricultural commodity on a field on which highly erodible land is predominant, and (c) persons producing an agricultural crop on converted wetland; and (2) to make the requirements of the Food Security Act of 1985 (the Act), with respect to denial of insurance benefits to producers found in violation of the provisions of the Act, apply equally to policyholders of insurance companies under an Agency Sales and Service Contract with FCIC, and policyholders whose policies of crop insurance are reinsured by FCIC under a Standard Reinsurance Agreement.

One additional amendment to the rule made in response to public comment, and included herein, is to provide that reinsurance will continue for reinsured companies in compliance with the Corporation's regulations and procedures, unless it is shown that the company had knowledge of facts which would indicate ineligibility on the part of the insured but ignored those facts. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended; the Food Security Act of 1985; and 7 CFR 12 (51 FR 23496 et seq.).

EFFECTIVE DATE: May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 31, 1991.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On August 15, 1986, FCIC published an interim rule, effective upon publication in the **Federal Register** at 51 FR 29202, to implement the provisions of the Food Security Act of 1985 (Pub. L. 99–198, enacted December 23, 1985) (the Act), with respect to the denial of crop insurance benefits to any person convicted of violation of Federal or State statutes relative to controlled substances, or who are found in violation of the Highly Erodible Land Conservation and the Wetland Conservation provisions in the Act:

1. *Section 1211:* Provides that any person who in any crop year produces an agricultural commodity on a field on which highly erodible land is predominant shall be ineligible for, as to any commodity produced during that crop year by such person, crop insurance under the Federal Crop Insurance Act.

2. *Section 1221:* Provides that any person who in any crop year produces an agricultural commodity on converted wetland shall be ineligible for, as to any commodity produced during that crop year by such person, crop insurance under the Federal Crop Insurance Act.

3. *Section 1764:* Provides that, if a person is convicted under Federal or State statutes of planting, cultivation, growing, producing, harvesting, or storing a controlled substance in any crop year, such person shall be ineligible for crop insurance benefits under the Federal Crop Insurance Act, as to any commodity produced during that crop year, and for the four succeeding crop years.

Departmental regulations implementing sections 1211 and 1221 of the Act were published as an interim rule by the Department on Friday, June 27, 1986 at 51 FR 23496 *et seq.* and will be codified in Part 12 of 7 CFR.

Written comments were solicited by FCIC for 60 days following publication of the rule in the **Federal Register** and the rule was scheduled for review so that any amendments made necessary by public comment could be published

in the Federal Register as quickly as possible.

Comments were received from the Crop Hail Insurance Actuarial Association (CHIAA) which expressed the concerns listed below. FCIC reviewed the CHIAA comments carefully, both in light of the requirements of the Act, and FCIC's compliance under the law.

Comment 1: The feasibility of enforcing the sodbuster/swampbuster provisions of the Act may remain in question until company policies specifically address the sodbuster/swampbuster issue.

The only existing crop policy provision related to this issue reads. . . . "we reserve the right to limit the insured acreage of said crop to any acreage limitations established under any Act of Congress, providing you are so notified in writing prior to planting of said crop."

However, producers found in violation of the Act will actually be denied crop insurance coverage rather than having their insurable acres limited. Thus, until new language can be written into crop policies, it is questionable whether companies will have any means by which to enforce the sodbuster/swampbuster provisions.

FCIC Response: As CHIAA recognizes in the comment, the provision of the policy relating to acreage limitations is not applicable to this rule. The provision quoted by CHIAA refers to the voluntary acreage diversion programs under various Federal statutes. The provision treated by this rule, however, is mandatory.

The Act specifically requires the Corporation to take the action set out in the interim rule. The Act was effective December 23, 1985, and the provisions in question were made effective upon enactment. The Department of Agriculture published an interim rule implementing these provisions of the Act on June 27, 1986 (51 FR 23496).

The interim rule provided at 7 CFR 12.7(a)(2) (51 FR 23505) that:

> The person applying for benefits must certify (Form AD–1026, Highly Erodible Land and Wetland Conservation Certification) that such person will not produce an agricultural commodity on highly erodible land or converted wetland during the crop year in which the person is seeking such benefits, unless such production is exempt, in accordance with § 12.5 of this part, from the provisions of § 12.4 of this part.

Section 12.4(a) provides:

> Except as provided in § 12.5, any person who, after December 23, 1985, produces an agricultural commodity on a field in which highly erodible land is predominant or on converted wetland shall be ineligible:
>
> * * * * *
>
> (iv) For crop insurance under the Federal Crop Insurance Act; . . .

Section 12.5 generally provides for relief from the provisions for any crop which was planted prior to June 27, 1986, the date of publication of the rule. The supplementary information to the Department's interim rule specifically provided that compliance for FCIC would not begin until the 1987 crop year because of policies already in effect.

FCIC's own implementing regulations (51 FR 29202, August 15, 1986) carried this forward. All applications accepted and contracts renewed for the 1987 crop year should have required evidence of certification by the insured on the appropriate Form AD–1026.

The statute and the implementing regulations are clear. The Corporation has no authority to allow benefits under the Federal Crop Insurance Act, either for premium subsidy, administrative expense subsidy, or indemnity payment to anyone in violation of the Act.

Implementation does not require a contract change. Payment of benefits under the Act is not legal. Payment of benefits in violation of the Act or these regulations is *ultra vires* and contrary to public policy. No contract entered into contrary to the regulations and subsequent to their promulgation can prevail against the command of the statute. State laws to the contrary do not apply (7 U.S.C. 1506(k)).

The rules were published in sufficient time to be effective for the 1987 crop year (fall-planted 1986 crops). The remedy is clear; a policy in effect will be terminated and an application for a new policy will not be accepted unless certification on the proper form (AD–1026) is made prior to the termination date or sales closing date, whichever is applicable.

Comment 2: Since coverage attaches when the crop is planted, some crop insurance policies for 1987 will have gone into effect before reinsured companies can properly notify their insureds of the sodbuster/swampbuster provisions. The companies will be obligated to provide insurance coverage to producers in this situation, regardless of the producer's status under the Act.

FCIC Response: As discussed in response to the first comment, the Act, and the regulations issued by the Department at 7 CFR Part 12, are clear. The regulations issued by the Corporation only reinforce the Departmental regulations. All policies where insurance attached on or after August 15, 1986, and which are in violation of the Act are invalid under the Federal Crop Insurance Act, as amended, and the Food Security Act of 1985. These statutory provisions and the regulations issued thereunder should be a defense in any legal action to enforce the insurance contract.

All policies where insurance had attached prior to August 15, 1986, will be considered valid under the provisions of this subpart until the next termination date.

Comment 3: The interim rule clearly states that the insurance company will not be eligible for reinsurance if they insure a producer who is in violation of the Act. But companies which follow the procedures set up for administering the Act should not be denied reinsurance, though they may become required to pay an insured found in violation of the Act. Companies will often times have little control over insured misrepresentation and judicial determinations.

FCIC Response: This comment has some validity. If the reinsured company follows the procedures of the Corporation and the requirements of the regulations, then reinsurance will be provided under the reinsurance agreement. The payments to the producer will still be invalid and the company must take all necessary steps to recover any payments made in violation of the Act and the regulations.

The Department has established a certification program. The company will be able to rely on that certification unless it has reason to believe that the certification is false. Any determination on the part of the company to terminate or cease collection efforts for recovery of amounts paid under the Act must be specifically approved by the Corporation.

Comment 4: Insurance companies are subject to the laws and regulations of the states in which they operate, as well as Federal laws and regulations. The interim rule will jeopardize the ability of companies to comply with state insurance regulations. The company may be contractually required to meet the policy obligations (i.e., pay a claim), but may be ineligible for reinsurance benefits from FCIC.

FCIC Response: The supremacy clause of the Constitution of the United States provides that Federal law controls in the event of conflict between Federal and State requirements. Additionally, if the reinsured companies have obtained the required certification from the insured, the fraud in obtaining the policy should provide adequate defense to the State requirements.

Here again the imperative requirement of the Act does not leave

the Corporation with much administrative discretion in this matter (see answer to #3 above).

Comment 5: The certification requirements of the Act could be met by using the regular insurance service documents already being used. Companies can ask the producer to certify compliance with the Act through a statement in the application for insurance and/or the annual acreage report. This would reduce the burden of the company agents to maintain an updated certification form on file for each insured.

FCIC Response: Certification of the controlled substance requirement could certainly be made on the application. However, the certification for controlled substance violations on the acreage report would not be acceptable since that report is filed after the termination date.

The Department of Agriculture has established one certification form for all of the government programs involved under the sodbuster/swampbuster provisions. In order to maintain this uniformity, and to make sure the insured is aware of what he is certifying, use of the Form AD–1026 is required for compliance with the sodbuster/swampbuster provisions.

The producer only has to certify one time, usually at the Agricultural Stabilization and Conservation Service (ASCS) or the Farmers Home Administration (FmHA) office. A copy of the certification is provided the producer for the Corporation.

If the producer loses the copy, or does not go to the ASCS or FmHA office first, all agents have been issued a supply of these forms and the insured may fill out the certification at the agent's office. However, the certification must be done on the Form AD–1026. The producer is then given the other copies of the certification for use under the other government programs involved. Because the insured is certifying to future performance, certification must be done each year for all programs.

Comment 6: It appears that to comply with the Act, the company service documents should also include a certification that the insured is not in violation of the controlled substance provision.

FCIC Response: See the response to comment #5 above.

To the extent that insurance may have attached for the 1987 crop year before the date of publication of the FCIC regulations implementing the Act, the comments by CHIAA would appear to be well taken. The final rule is altered accordingly. The rule is also clarified to make sure that compliance of the reinsured companies with the Corporation's regulations and procedures will continue reinsurance unless it is shown that the agent or company had knowledge of facts which would indicate ineligibility on the part of the insured but ignored those facts.

List of Subjects in 7 CFR Part 400

Crop insurance; Administrative Regulations—Food Security Act of 1985, Implementation; Denial of benefits.

Final Rule

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends 7 CFR Part 400, General Administrative Regulations, by making final an interim rule (published August 15, 1986; 51 FR 29202) by revising Subpart F, Food Security Act of 1985, Implementation; Denial of Benefits, to read as set forth below:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

* * * * *

Subpart F—Food Security Act of 1985, Implementation; Denial of Benefits

Sec.

400.45 Applicability.
400.46 Definitions.
400.47 Denial of crop insurance.
400.48 Protection of interests of tenants, landlords or producers.
400.49 Certification.

Authority: Sections 1506, 1516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1501 et seq.); section 1244, Pub. L. 99–198.

Subpart F—Food Security Act of 1985, Implementation; Denial of Benefits

§ 400.45 Applicability.

(a) The regulations in this subpart implement Chapter XII and section 1764 of the Food Security Act of 1985 (Pub. L. 99–198) (the Act) requiring the denial of crop insurance to persons who are determined to have performed certain practices prohibited by the Act or who have violated certain federal or State statutes or the regulations implementing the Act. The provisions of this subpart are applicable to all crop insurance policies written by the Federal Crop Insurance Corporation (the Corporation) or reinsured by the Corporation.

(b) The provisions of this subpart will be effective for the crop and crop year immediately following the first crop cancellation date occurring after the effective date of the Act for all crop policies reinsured by FCIC, and for all policies and regulations for crop insurance issued by FCIC.

§ 400.46 Definitions.

For the purpose of this regulation and in addition to the definitions included at 7 CFR 12.2, the following definitions are applicable:

(a) "Controlled substance" means any prohibited drug-producing plants including, but not limited to, cacti of the genus *lophophora*, coca bushes *(erythroxylum coca)*, marijuana *(cannabis satiua)*, opium poppies *(papauer somniferum)*, and other drug-producing plants, the planting and harvesting of which is prohibited by federal or State law.

(b) "Person" means any producer, tenant, or landlord, insured under a policy of crop insurance issued by FCIC, or by a multi-peril insurance company whose crop insurance policy is reinsured by FCIC.

(c) "State" means each of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific.

(d) "The Act" means the Food Security Act of 1985 (Pub. L. 99–198).

§ 400.47 Denial of crop insurance.

(a) Any person who, after December 23, 1985, is convicted under federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year shall be ineligible for crop insurance as to any commodity produced by such person during that crop year, and during the four succeeding crop years.

(b) Any person who in any crop year produces an agricultural commodity on a field on which highly erodible land is predominant shall be ineligible for crop insurance as to any commodity produced by such person for that crop year, unless such person is exempt under the provisions of 7 CFR 12.5.

(c) Any person who in any crop year produces an agricultural commodity on converted wetland shall be ineligible for crop insurance as to any commodity produced by such person for that crop year, unless such person is exempt under the provisions of 7 CFR 12.5.

(d) The insurance of any person insured by FCIC who is ineligible under the provisions of this subpart will be null and void and any indemnity paid because of such insurance must be returned to FCIC. Any premium paid for insurance coverage declared null and void will be returned less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid.

(e) Any person ineligible for crop insurance under the provisions of this subpart may make application for crop insurance for the crop year following the applicable period of ineligibility by submitting a new application. The previous application and policy of insurance will be cancelled.

(f) Any insurance written by a multi-peril crop insurance company to any person who is ineligible under the provisions of this subpart is not eligible for reinsurance under the Corporation's standard reinsurance agreement. Any premium subsidy and expense allowance or loss paid by the Corporation because of such agreement will be immediately refunded to the Corporation. Notwithstanding any other provision of law, policies written by multi-peril crop insurance companies to any person ineligible under the provisions of this subpart are null and void. Premium paid for such policies will be refunded to the person applying for insurance, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid, and no indemnity will be paid unless the multi-peril company expressly agrees to continue such policy in effect without FCIC reinsurance. However, if the reinsured company follows the procedure of the Corporation and the requirements of the regulations, reinsurance will continue to be provided under the reinsurance agreement on the policy unless it is shown that the agent or company had knowledge of facts which would indicate ineligibility on the part of the insured and failed to act on that knowledge.

(g) The determinations of the Soil Conservation Service, the Agricultural Stabilization and Conservation Service and the Secretary of the Interior made within their designated areas of responsibility will be binding upon the Corporation and such determination is not subject to the Corporation's appeal process (7 CFR Part 400, Subpart J hereof) (See Part 12 of 7 CFR). Any person determined to be ineligible during any crop year by any other agency under the provisions of the Act will be conclusively presumed to be ineligible for FCIC benefits.

(h) FCIC employees or contractors are required to report all suspected cases of violation of the Act or the regulations to the appropriate agency for a determination of violation. Benefits shall not be paid in such cases pending a determination from the appropriate agency.

(i) Notwithstanding any other provision of this Subpart, any crop insurance policy where insurance attached to a crop prior to August 15, 1986, will continue in effect for that crop until the next termination date following August 15, 1986.

§ 400.48 Protection of interests of tenants, landlords or producers.

Any tenant, landlord or producer on the farm separate from the person declared ineligible for crop insurance under the provisions of § 400.47 of this part, will remain eligible for crop insurance on their insurable share in the crop, unless such tenant, landlord, or producer on the farm is:

(a) Also convicted of planting, cultivating, growing, producing, or storing a controlled substance;

(b) In violation of Chapter XII of the Act and the regulations issued thereunder; or

(c) Otherwise determined by FCIC to be ineligible for crop insurance.

§ 400.49 Certification.

Each applicant for insurance under the Federal Crop Insurance Act, as amended, is required to certify on Form AD–1026, Highly Erodible Land and Wetland Conservation Certification, prior to the sales closing date for the crop to be insured, that for that crop year such person will not produce an agricultural commodity on highly erodible land or converted wetland during the crop year unless such production is exempt in accordance with 7 CFR 12.5.

Done in Washington, DC on April 14, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–11561 Filed 5–20–87; 8:45 am]

BILLING CODE 3410–08–M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Farm Credit System Capital Corporation Organization; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration published final amended regulations under Part 611 on April 15, 1987 (52 FR 12135). These regulations relate to matters involving the Farm Credit System Capital Corporation's (Capital Corporation) organization and exercise of powers conferred on the Capital Corporation by Congress to address the financial difficulties experienced by Farm Credit System institutions. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 20, 1987.

EFFECTIVE DATE: May 20, 1987.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Peoples, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

(Secs. 5.17 (9) and (10), Pub. L. 92–181, as amended by Pub. L. 99–205, 12 U.S.C. 2252(a)(9)(1))

William A. Sanders, Jr.,

Secretary, Farm Credit Administration Board.

[FR Doc. 87–11673 Filed 5–20–87; 8:45 am]

BILLING CODE 6705–01–M

12 CFR Part 614

Loan Policies and Operations; Borrower Rights; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration published final amended regulations under Part 614 on April 15, 1987 (52 FR 12143). These regulations relate to matters involving the disclosure of interest rates and related information, practices relating to applications for extensions of credit, forbearance policies, notices of equity retirement, access to stockholders list, and the disclosure of loan documents. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 20, 1987.

EFFECTIVE DATE: May 20, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy E. Lynch, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020.

(Secs. 5.17(9) and (10), Pub. L. 92–181, as amended by Pub. L. 99–205, 12 U.S.C. 2252(a)(9)(1))

William A. Sanders, Jr.,

Secretary, Farm Credit Administration Board.

[FR Doc. 87–11672 Filed 5–20–87; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-ASW-34; Amdt. 39-5591]

Airworthiness Directives; Boeing Vertol Company Model 107-II and Kawasaki Heavy Industries, Ltd., Model KV107-II and KV107-IIA Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires different retirement times than are presently required for certain dynamic components in the main rotor head and drive train of the Boeing Vertol Model 107-II and Kawasaki Model KV107 II series helicopters. The AD is needed to reduce the retirement times in certain cases to prevent fatigue failure of the affected components which could result in loss of the helicopter and in other cases, to provide relaxation where the retirement time may be increased. The AD is prompted by an engineering reevaluation of the flight spectrum when the helicopters are used for "logging" operations.

This amendment supersedes five other AD's which pertain to this same subject and now become obsolete with the adoption of this amendment.

DATES: Effective date: May 14, 1987.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 14, 1987.

Compliance: Compliance required within the next 100 hours' time in service after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Boeing Vertol Company, Boeing Center, P.O. Box 16858, Philadelphia, Pennsylvania 19142. A copy of the documents is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Joseph E. Chrastil, ANE-172, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone (516) 791-6221.

SUPPLEMENTARY INFORMATION: Upon reevaluation, the FAA has determined that a number of main rotor head and drive train dynamic components require either reduced or increased retirement times (or service lives) based on an analysis using data from a revised operational flight spectrum tailored to logging or frequent external load lifting operations of the Boeing Vertol Model 107-II helicopter. Exceeding these new and reduced retirement times could lead to certain component fatigue failures and possible loss of the helicopter. The increased retirement times for certain other components allow continued use beyond the present requirements. Several components did not experience a change from their previous retirement time. The original fatigue evaluation of the Model 107-II main rotor head and drive train considered an airline type operational flight spectrum. Subsequently, the Model 107-II helicopters were removed from airline operations and placed into a utility type of operation; i.e., logging/external load operations. After operating a number of years in the logging/external load mode, failures of several dynamic components occurred both in the drive train and the main rotor head. Corrective action was taken by the FAA by the issuance of five AD's from 1963 to 1983 to maintain an acceptable level of safety for the Boeing Vertol Model 107-II and the Kawasaki Model KV107 II and KV107 IIA helicopters.

Additionally, a new program was later initiated by Boeing Vertol Company in coordination with the FAA to reevaluate the previously established lives in the main rotor head and drive train of the Model 107-II helicopters. A revised flight or operational spectrum (logging) was established and a flight loads (strain) survey was conducted. Based on this spectrum and flight data, the reevaluation resulted in reduced or increased, as appropriate, retirement lives for several components. This AD is necessary to achieve compliance with the new lives established by the evaluation. In addition, a special inspection of the main rotor head, either forward or aft, is included in this AD to permit an extended life when the forward main rotor hub is inverted but installed on the aft rotor head or conversely, the aft main rotor hub is inverted and installed on the forward head.

With adoption of this new amendment, the following five AD's are obsolete and superseded:

(a) AD 63-26-04, Amendment 656 of Part 507 (28 FR 13931) as amended by Amendment 39-107 (30 FR 8963);

(b) AD 77-16-03, Amendment 39-2993 (42 FR 38898);

(c) AD 80-08-11, Amendment 39-3746 (45 FR 25050);

(d) AD 82-27-06, Amendment 39-4522 (47 FR 57484); and

(e) AD 83-22-02, Amendment 39-4757 (48 FR 50069).

These five AD's cover parts that are either obsolete and have been replaced by newer design parts, or parts for which the lives specified in the AD's are no longer current.

The Kawasaki Model KV107-II and KV107-IIA helicopters are manufactured in Japan under a license agreement with the Boeing Vertol Company and imported into the U.S. The Model KV107-II and KV107-IIA are identical in many respects to the Boeing Vertol Model 107-II helicopter. Both of these types of helicopters are presently used in the same manner by the only U.S. operator of these helicopters and allegedly common parts are interchanged between these types of aircraft. As stated previously, this AD is prompted by a reevaluation of typical logging operations in the United States.

The FAA contacted the Japanese Civil Aviation Bureau (JCAB) regarding this action. The JCAB, in a letter dated December 26, 1986, cited the excellent service history of the Kawasaki Model KV107-II and KV107-IIA helicopters used elsewhere in the world and recommended that any forthcoming FAA AD should be limited to severe logging operations or operations having frequent ground-air-ground cycles. The JCAB comment is appreciated and reflects the potential worldwide impact of any FAA AD action. Notwithstanding the JCAB's concern for applicability of the reduced component life to passenger carrying Kawasaki rotorcraft, this AD applies to the models noted regardless of types of operation. This is necessary since there is no practical FAA regulation process to assure proper tracking of parts and compliance with their life limits when transferred from passenger operations to external load operations and vice versa.

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

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under

DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new AD.

Boeing Vertol Company (Vertol) and Kawasaki Heavy Industries, Ltd.: Applies to Model 107-II helicopters and Kawasaki Model KV107-II and IIA helicopters, certificated in any category.

Compliance is required within the next 100 hours' time in service after the effective date of this AD, unless already accomplished.

(a) To prevent hazards in flight associated with the fatigue failure of life limited components, the following retirement lives are imposed:

Component part	Part No.	Life limit hours	Appendix
Alum Synch	107D3141	9,940	
Shaft Assembly	107D3341	9,940	
Steel Synch	107D3140	7,850	
Shaft Assembly	107D3340	7,850	
	A15D3840-1	24,750	
Synchronizing	107D3154-2	500	No. 1.
Shaft Splined	107D3154-3, -4	3,000	
Adapter	107D3144-1	14,615	
Mix Box Collector Gear	107D2066-10 thru -28.	11,075	
Fwd Rotor Shaft and Carrier Assy	A02D1259-3	2,100	
	A02D1269-1	2,100	
	A07D1269-1	2,100	
	A02D1259-3SP	13,580	
	A02D1269-1SP	13,580	
	A07D1269-1SP	13,580	
	A02D1269-2	13,580	
Quill Shaft	107D2067-1, -3, -5	5,620	No. 2.
Aft Transmission Planet Carrier	107D2419 or A02D2419.	8,700	
Aft Rotor Drive Shaft upper extension	A02D3147	7,200	
Aft Rotor Shaft	107D3171-2, -3, -4, -5.	15,860	
Lower Section	A2D3171-3, -4, -6	15,860	
Aft Rotor Shaft	107D3151	19,140	
Center Section	A02D3151	19,140	
Fwd Hub	107R2550	2,500/1,200	No. 3.
Aft Hub	107R2550	10,460/3,000	
Fwd and Aft Connecting Link	107R2551-1 or A02R2551-8.	6,610	
Fwd and Aft Hub	A02R2589-3	25,140	
Horizontal Hinge Pin	107R2589-3	25,140	
Fwd and Aft Lag Damper Piston Rod End	107R2601-1	4,670	

Appendices

No. 1. Synchronizing shaft splined adapter, Part Number (P/N) 107D3154-2, shall be repetitively inspected as specified in Boeing Vertol (BV) Service Bulletin 107-116 (R-1), Revision B, dated February 21, 1983, or FAA-approved equivalent. P/N 107D3154-3 and -4 require repetitive visual and dye check inspections as specified in the BV107-6 Maintenance Schedule, section 2, dated February 7, 1986, and Service Bulletin 107-116 (R-1)B.

No. 2. Quill shaft, P/N 107D2067-1, has a life limit of 120 hours unless the modifications specified in paragraph (e) of AD 63-24-04 revised October 15, 1964, Amendment 648 of Part 507 (28 FR 12614) as amended by Amendment 821 of Part 507 (29 FR 14169), are accomplished. (Also, reference Boeing Service Bulletins 107-113, Revision A, dated November 22, 1963, and 107-182, Revision B, dated July 26, 1965.)

No. 3. The life limit for the forward rotor hub spline is 2,500 hours. After 2,500 hours of service, the hub is to be magnetic particle inspected. If found to be free of cracks and not having a wear step on the profile face of the spline in excess of 0.002 inch, the hub may be inverted and installed on the aft rotor head for an additional 3,000 hours of use. On completion of the additional 3,000 hours, the hub is to be retired from service.

The life limit for the aft rotor hub spline is 10,460 hours. After 10,460 hours of use, the hub is to be magnetic particle inspected. If found to be free of cracks and not having a wear step on the profile face of the spline in excess of 0.002 inch, the hub may be inverted and installed on the forward rotor head for an additional 1,200 hours of use. On completion of the additional 1,200 hours, the hub is to be retired from service. (An acceptable procedure for measuring the 0.002-inch step wear is contained in Boeing Vertol Overhaul Manual 107-5, Chapter 60-20-1.)

Inverting and switching of main rotor hubs are permitted to the life limit stated above any number of times provided accurate records are maintained of the total hours the hubs are installed on an aft head and on a forward head.

(b) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

(c) Aircraft may be ferried to a base in accordance with FAR 21.197 and 21.199 where compliance can be accomplished.

The repair and inspection procedures in Boeing Vertol (BV) Service Bulletin (SB) 107-113, Revision A, dated November 22, 1963; BV SB 107-116 (R-1), Revision B, dated February 21, 1983; BV SB 107-182, Revision B, dated July 26, 1965, and BV 107-6 Maintenance Schedule, section 2, temporary Revision 31, dated February 7, 1986, incorporated by reference in this directive were approved by the Director of the **Federal Register** pursuant to 5 U.S.C. 552(a)(1) and 1 CFR Part 51. Copies may be obtained from Boeing Vertol Company, Boeing Center, P.O. Box 16858, Philadelphia, Pennsylvania 19142. These documents may be examined at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106 or the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment supersedes the following:

Amendment 656 of Part 507 (28 FR 13931) as amended by Amendment 39-107 (30 FR 8963), AD 63-26-04;

Amendment 39-2993 (42 FR 38803), AD 77-16-03;

Amendment 39-3746 (45 FR 25050), AD 80-08-11;

Amendment 39-4522 (47 FR 57484), AD 82-27-06; and

Amendment 39-4757 (48 FR 50069), AD 83-22-02.

This amendment becomes effective May 5, 1987.

Issued in Fort Worth, Texas, on March 18, 1987.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 87-11622 Filed 5-20-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ANM-3]

Alteration of Transition Area, Ontario, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Ontario, Oregon, transition area to provide controlled airspace for transition routes for arrivals executing the NDB Runway 32 Standard Instrument Approach Procedures to the Ontario Municipal Airport.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-534, Federal Aviation Administration, Docket No. 87-ANM-3, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2534.

SUPPLEMENTARY INFORMATION:

History

On March 5, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace for the Ontario Municipal Airport (52 FR 6805). This additional airspace is needed to protect arrivals executing the NDB Runway 32 Standard Instrument Approach Procedures to the Ontario Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republishing in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes additional controlled airspace for transition routes for arrivals executing the NDB Runway 32 Standard Instrument Approach Procedures to the Ontario Municipal Airport.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (52 FR 6805) is amended as follows:

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ontario, Oregon, Transition Area (Amended)

Add the following: . . . RBN; and that airspace extending upward from 1,200 feet above the surface within 5 miles each side of the 085°T and 159°T bearing extending from the Ontario NDB to the northeast edge of V500 and the southeast edge of V269/southwest edge of V4-444.

Issued in Seattle, Washington, on May 11, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 87-11564 Filed 5-20-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AGL-1]

Alteration to Control Zone and Transition Area—Evansville, IN; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects **Federal Register** Document 87-8109, in the issue of Monday, April 13, 1987. On page 11816 change "Evansville VORTAC" to read "Pocket City VORTAC".

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

Issued in Des Plaines, Illinois, on April 28, 1987.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 87-11566 Filed 5-20-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWP-40]

Amendment to Vandenberg Air Force Base, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the description of the Vandenberg AFB, California, control zone to include portions with R-2516 which are presently excluded. This will provide controlled airspace at Vandenberg AFB for conducting Special Visual Flight Rules, (SVFR) operations when visibility is less than 3 statute miles.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1648.

SUPPLEMENTARY INFORMATION:

History

On February 11, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the description of the Vandenberg AFB, California, control

zone (52 FR 4348). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the description of the Vandenberg AFB, California, control zone and includes portions within R-2516 which are presently excluded. This action will provide controlled airspace for SVFR flight operations when visibility is less than 3 statute miles. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 25, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone, Transition area.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71), (52 FR 4348), is amended as follows:

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Vandenberg AFB, CA [Amended]

Remove "excluding that portion within R-2516" from the control zone description.

Issued in Los Angeles, California, on May 7, 1987.

Wayne C. Newcomb,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87-11567 Filed 5-20-87; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Part 359

Railroad Vacancy Reporting and Hiring Requirements

AGENCY: Railroad Retirement Board.

ACTION: Interim final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby adds a new Part 359 to 20 CFR Chapter II. Part 359 is intended to give effect to the vacancy reporting and hiring requirements of section 704 of the Regional Rail Reorganization Act of 1973 and related legislation. Section 704, as amended, requires the Board to issue a warning and to assess a civil penalty when it finds that a railroad has failed to comply with the vacancy reporting requirements. In Part 359 the Board gives notice as to how a railroad may comply with the vacancy reporting and hiring requirements and under what circumstances a warning and/or penalty shall be imposed.

DATES: These regulations are effective as of May 21, 1987, and expire as of the close of business August 12, 1987, except § 359.7 (a) through (c) which continues in effect.

ADDRESS: Office of Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Verplaetse, Director of Program Policy, Planning and Evaluation, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611; (312)751-4830 (FTS)386-4830.

SUPPLEMENTARY INFORMATION: The Consolidated Omnibus Budget Reconciliation Act of 1985, enacted April 7, 1986 as Pub. L. 99-272, amended section 704(f) of the Regional Rail Reorganization Act of 1973 to extend through August 12, 1987 the authority of the Railroad Retirement Board to carry out the provisions of section 704 of the Act. The Board's authority had elapsed August 13, 1985 with the expiration of the 4-year period originally provided for by section 704(f). Section 704 calls for the Board to maintain a central employment register for certain separated railroad employees who remain available for rail industry employment. Section 704 also requires each railroad company to report job vacancies to the Board so that furloughed and separated employees, including employees claiming a hiring preference, will have an opportunity to be considered for those vacancies.

In addition to extending the Board's authority through August 12, 1987, the Consolidated Omnibus Budget Reconciliation Act amended section 704(c) of the Regional Rail Reorganization Act by providing for the Railroad Retirement Board to issue a formal warning to any railroad that does not comply with the vacancy reporting requirements of section 704(c). That section also empowers the Board to impose a civil penalty with respect to any subsequent violation. As the amendments to section 704 were not enacted until April 7, 1986, the warning and penalty provisions of these regulations shall apply only with respect to violations occurring on or after that date. The Board's authority expires August 13, 1987 and with it the aforementioned warning and penalty provisions.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collection contemplated by this Part has been approved by the Office of Management and Budget.

List of Subjects in 20 CFR Part 359

Railroad employees, Railroad employment, Railroads, Railroad hiring.

Title 20 CFR Chapter II is amended as follows:

A new Subchapter E (currently designated as Reserved) consisting of Part 359 is added as follows:

SUBCHAPTER E—RAILROAD VACANCY AND HIRING REQUIREMENTS

PART 359—RAILROAD HIRING

Sec.

359.1 Purpose.
359.2 Definitions.
359.3 Reporting job vacancies.
359.4 Failure to report a vacancy.
359.5 First right of hire.
359.6 Resolution of disputes.
359.7 Central register.
359.8 Sunset provision.

Authority: 45 U.S.C. 362(1), 797, 907, 1004; Sec. 4011 of Pub. L. 99-272.

§ 359.1 Purpose.

These regulations set forth the duty of each railroad to comply with the

vacancy reporting and hiring requirements of section 704 of the Regional Rail Reorganization Act of 1973 and related legislation, and the method for complying. Effective April 7, 1986, a railroad that fails to comply with the vacancy reporting requirements is subject to a warning and a penalty with respect to any future violation, as explained in this Part.

§ 359.2 Definitions.

As used in this part—

Act means the Regional Rail Reorganization Act of 1973, as amended.

Board means the Railroad Retirement Board.

Conrail means the Consolidated Rail Corporation.

Deprived of employment has the meaning given in Part 395 of this Chapter.

Employee means an individual as defined in section 1(d) of the Railroad Unemployment Insurance Act (45 U.S.C. 351(d)).

Milwaukee Road means the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

Non-agreement employee has the meaning given in Part 395 of this Chapter.

Railroad means an employer or carrier subject to the Railway Labor Act, the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

Rock Island Railroad means the Chicago, Rock Island and Pacific Railroad Company.

§ 359.3 Reporting job vacancies.

(a) Each railroad shall provide timely notice to the Board of any employment vacancy for which the railroad plans to consider applications from persons other than its own employees. Notice to the Board is "timely" if it is received by the Board:

(1) At least 14 calendar days before the close of the application period;

(2) Prior to the date on which the railroad first takes applications for the vacancy; or

(3) Concurrently with the use of any other recruitment source or hiring effort.

(b) Notices of job vacancies shall be provided to the nearest Board district office. Notice may be given by telephone but shall then be followed by written notification released to the Board within 48 hours of the notice by telephone. Each notice shall provide the following:

(1) The number of vacancies;

(2) The location of the vacancies;

(3) The class or craft of the vacancy or a brief description of the work and job qualifications; and

(4) The name, address and telephone number of the appropriate railroad hiring official.

(c) The Board will use the information contained in job vacancy reports to select and refer for possible employment employees whose skills and/or experience may meet the railroads' job vacancy qualification requirements. The Board shall also promote the placement of employees by publication or distribution of job vacancy information.

(Approved by the Office of Management and Budget under control number 3220–0122)

§ 359.4 Failure to report a vacancy.

(a) When the Board becomes aware of a railroad's failure after April 7, 1986 to report a job vacancy as required by § 359.3 of this Part, the Board's Associate Executive Director for Unemployment and Sickness Insurance shall warn the railroad of its potential liability for a civil penalty under section 704(c)(2)(B) of the Act. Such warning shall be issued notwithstanding any assertion that the failure to report the vacancy was inadvertent or unintentional.

(b) After a warning has been issued pursuant to paragraph (a) of this section, a railroad that again fails to comply with the vacancy reporting requirements of § 359.3 of this Part shall be liable for a civil penalty of $500.00 for each subsequent instance of failure to report a vacancy to the Board. The railroad may also be required to suspend filling the vacancy and to comply with the provisions of these regulations.

(c) The warning notice called for by paragraph (a) of this section or notice of the penalty to be imposed under paragraph (b) of this section shall be issued to the railroad hiring official or other designated railroad contact official and shall set forth the specific reasons for the warning or penalty. The railroad shall have 30 days from the date of the notice to respond if the railroad believes the notice is not justified. If no response is received within 30 days of the date of the notice, the warning or penalty shall stand.

(d) After considering the railroad's response, the Associate Executive Director shall decide whether to affirm or cancel the notice and shall notify the railroad of the decision. The Associate Executive Director's decision shall be final and not subject to further review.

(e) Payment of a civil penalty imposed under paragraph (b) of this section shall be remitted by check made payable to the U.S. Railroad Retirement Board and shall be mailed to the Associate Executive Director for Unemployment and Sickness Insurance. Such payments shall be deposited to the credit of the railroad unemployment insurance administration fund. Payment shall be due within 30 days of the date that a railroad has been notified of the civil penalty.

§ 359.5 First right of hire.

(a) Any railroad that plans to fill a vacancy with an individual other than one of its own employees shall give a preference to certain former employees of the Milwaukee Road, the Rock Island Railroad and Conrail who are qualified for the vacancy, subject to the following provisions of this section.

(b) A former Milwaukee Road employee shall have a first right of hire if he or she:

(1) Was a Milwaukee Road employee on September 30, 1979;

(2) Was separated or furloughed from the Milwaukee Road prior to April 1, 1984 other than for cause; and

(3) Was separated or furloughed because of a reduction in service by the Milwaukee Road.

(c) A former Rock Island Railroad employee shall have a first right of hire if he or she:

(1) Was a Rock Island Railroad employee on August 1, 1979;

(2) Was separated or furloughed (other than for cause) from the Rock Island Railroad or from a railroad that provided temporary service over Rock Island Railroad lines prior to January 1, 1984; and

(3) Was separated or furloughed because of a reduction in service by either the Rock Island Railroad or the temporary service carrier.

(d) A former Conrail employee shall have a first right of hire if he or she:

(1) Had an employment relationship with Conrail on August 13, 1981;

(2) Was deprived of employment; and

(3) Had at least one year of service with Conrail or a predecessor railroad in the class or craft in which the vacancy exists. With respect to a non-agreement employee, the first right of hire applies to non-agreement vacancies in types of work in which the employee had at least one year of work experience with Conrail or a predecessor railroad.

(e) The foregoing first right of hire shall apply to any railroad job vacancy except when:

(1) The vacancy is being filled by the recall of a railroad's furloughed employee;

(2) The vacancy is filled with a member of a class protected under an affirmative action plan or other hiring plan designed to eliminate discrimination, if such plan is required by law or regulation or by an executive

order or a Federal court or agency decision; or

(3) The vacancy is filled with a member of a class protected under a permissible voluntary affirmative action plan.

§ 359.6 Resolution of disputes.

(a) An employee who believes that he or she has been aggrieved by a railroad's failure to report a job vacancy or to recognize a first right of hire granted him or her under § 359.5 of this Part may timely petition the Board to investigate his or her grievance. A petition is "timely" if received by the Board within two years of the date of the hiring which is the subject of the petition. An employee who does not file a timely petition with respect to the hiring forfeits his or her right to petition the Board.

(b) An employee's petition must identify the hiring action in dispute by providing the following information:

(1) The name of the employee who was hired or the approximate date of the hiring action;

(2) The location of the position;

(3) A description of the work or the name of the class or craft of the work;

(4) The name of the railroad that did the alleged illegal hiring;

(5) A statement of the petitioner's railroad work history and qualifications; and

(6) A statement explaining why the petitioner believes that his or her rights were violated.

(c) Following an investigation, the Board will report its findings to the employee and the appropriate railroad. If the Board finds that the railroad may have violated the employee's rights, the grievance is subject to resolution under section 3 of the Railway Labor Act. If the Board finds that no violation occurred, that finding shall be final and not subject to review or appeal.

(d) If the Board finds that a railroad may have violated an employee's rights, it shall be the employee's responsibility to prosecute his or her claim. The Board shall not act for or represent the employee in the prosecution of his or her claim.

§ 359.7 Central register.

(a) The Board shall maintain a central register of railroad employees with at least one year of service who have declared their current availability for rail industry employment. The register shall indicate which of those employees claims a first right of hire under § 359.5 of this Part.

(b) The central register shall be subdivided by class and craft of prior employment and shall be updated periodically to reflect current employee availability.

(c) Upon request, listings of employees named in the central register and selected on the basis of job experience, location of residence, claimed hiring preference, last railroad employer or other available selection criteria will be furnished to railroads. Railroads may provide written notice of job vacancies to selected employees listed on the register. The railroad notice to the employees should contain job qualification requirements and application instructions. If the railroad requests, the Board shall notify the employees of the vacancy.

(d) A railroad's use of the central register to fill a vacancy shall not excuse the railroad from the requirements of § 359.3 of this Part.

§ 359.8 Sunset provision.

These regulations shall cease to be effective as of the close of business August 12, 1987, except that the Board shall continue to maintain the central register and to publish job vacancy information for the convenience of railroad employers and employees.

By Authority of the Board.

Dated: May 13, 1987.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 87-11553 Filed 5-20-87; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Eligibility for Underpayment Due a Deceased Beneficiary

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: In these regulations, we are revising our rules to prohibit payment of an underpayment due a deceased person to any individual who intentionally and feloniously killed that person. This change is consistent with the regulation now in place which prevents an individual from receiving any survivor's benefits or payments on the earnings records of any person if he or she feloniously killed the worker on whose earnings record such benefits would be payable.

EFFECTIVE DATE: These rules are effective May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7459.

SUPPLEMENTARY INFORMATION:

General

Section 404.305(b) of the regulations, 20 CFR 404.305(b), states the following:

> (b) *Insured's death caused by an intentional act.*
>
> You may not become entitled to or continue to receive any survivor's benefits or payments on the earnings record of any person if you were convicted of a felony or an act in the nature of a felony of intentionally causing that person's death . . .

The regulation thus prohibits the entitlement or continued entitlement of an individual to survivor's benefits or the lump-sum death payment on the earnings record of a worker whom that individual intentionally killed.

Section 404.305(b) does not, however, prohibit the payment of an underpayment due a deceased person to an individual who intentionally caused the underpaid decreased person's death.

We believe that expanding § 404.305(b) to prohibit an individual from receiving any underpayment due a person whom the individual killed is consistent with the well-established principle that an individual should not profit directly from intentionally causing another person's death.

We are amending § 404.305(b) to prohibit the payment of an underpayment due a deceased person to any individual who intentionally and feloniously killed that beneficiary.

Comments

These rules were published as a Notice of Proposed Rulemaking at 51 FR 26717 of July 25, 1986. We received one comment which was favorable to the proposed change. In order to clarify and remove any possibility of misunderstanding as to the effect of the regulation, we have deleted references to an underpaid "beneficiary" and substituted, therefore, where appropriate, the word "person" to assure that no individual can receive an underpayment due a person whom the individual intentionally killed.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because there will be no significant costs in implementing these

regulations. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.803, Social Security-Retirement Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

Dated: March 23, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: May 1, 1987.

Otis R. Bowen, M.D.

Secretary of Health and Human Services.

PART 404—[AMENDED]

Subpart D of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart D of Part 404 is revised to read as follows, and all other authority citations which appears throughout Subpart D are removed:

Authority: Secs. 202, 205, 216, 223, 225, 228, 1102 of the Social Security Act; Sec. 5, Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 402, 405, 416, 423, 425, 428, and 1302; and 5 U.S.C. Appendix.

2. In § 404.305 paragraph (b) is revised to read as follows:

§ 404.305 When you may not be entitled to benefits.

* * * * *

(b) *Person's death caused by an intentional act.* You may not become entitled to or continue to receive any survivor's benefits or payments on the earnings record of any person, or receive any underpayment due a person, if you were convicted of a felony or an act in the nature of a felony of intentionally causing that person's death. If you were subject to the juvenile justice aystem, you may become entitled to or continue to receive survivor's benefits or payments on the earnings record of any person, or receive any underpayment due a person, if you were found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony.

* * * * *

[FR Doc. 87-11677 Filed 5-20-87; 8:45 am]

BILLING CODE 4190-1-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8140]

Procedure and Administration; Returns Required on Magnetic Media

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the required use of magnetic media for filing certain returns. The regulations clarify that the failure to file an information return on a machine-readable form when required to do so is treated as a failure to file the return and may result in the imposition of a failure to file penalty. The regulations apply to persons required to file certain information returns on magnetic media or machine-readable forms.

EFFECTIVE DATE: The regulations are effective as of May 21, 1987, and apply to returns filed for a calendar year (or annual filing period) beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: See **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION: 1. Magnetic Media Reporting, Internal Revenue Service, National Computer Center, P.O. Box 1359, Martinsburg, West Virginia 25401-1359, 304-263-8700 (not a toll-free call), if the inquiry relates to the waiver procedure.

2. The following regional magnetic media coordinators of the Social Security Administration, if the inquiry relates to magnetic media filing for returns required on Form W-2 or W-2P:

SSA regional office	For persons residing in
Social Security Administration, J.F. Kennedy Building, Boston, Mass. 02203, ATTN: Joanne Shulman, Rm. 1109, 617-223-4375 (not a toll-free call).	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Social Security Administration, 26 Federal Plaza, New York, New York 10007, ATTN: Anne Coe, Rm. 4012, 212-264-0253 (not a toll-free call).	New Jersey, New York, Puerto Rico, and the Virgin Islands.
Social Security Administration, P.O. Box 8788, 3535 Market Street, Philadelphia, Penn. 19101, ATTN: Frank O'Brien, Rm. 8490, 215-596-0474 (not a toll-free call).	Delaware District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.
Social Security Administration, P.O. Box 1684, 101 Marietta Tower, Atlanta, Ga. 30301, ATTN: Pat McCarron, Suite 1804, 404-221-2587 (not a toll-free call).	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
Social Security Administration, 300 South Wacker Drive, Chicago, Illinois 60606, ATTN: Jim Juntunen, 32nd Floor, 312-353-6717 (not a toll-free call).	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Social Security Administration, 1200 Main Tower, Room 1535, Dallas, Texas 75202, ATTN: Pat Insko, 214-767-4311 (not a toll-free call).	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
Social Security Administration, 601 East 12th Street, Kansas City, Mo. 64106, ATTN: Dale Fick, 4th Floor East, 816-374-2085 (not a toll-free call).	Iowa, Kansas, Missouri, and Nebraska.
Social Security Administration, Federal Office Building, 1961 Stout Street, Denver, Col. 80294, ATTN: Rick Schremp, Rm. 1194, 303-837-2364 (not a toll-free call).	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Social Security Administration, 100 Van Ness Avenue, San Francisco, Cal. 94102, ATTN: Bill Brees, Systems Branch, 415-556-4788 (not a toll-free call).	American Samoa, Arizona, California, Guam, Hawaii, and Nevada.
Social Security Administration, 2901 Third Avenue, Seattle, Wash. 98121, ATTN: Jan Hotson, M/S 302, 206-442-0468 (not a toll-free call).	Alaska, Idaho, Oregon, and Washington.

Background

On March 25, 1986, the **Federal Register** published final regulations relating to section 6011 (e) of the Internal Revenue Code of 1986 (51 FR 10348). The regulations were adopted to reflect the addition to the Code of section 6011 (e) by section 319 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, 96 Stat. 610) and its amendment by section 109 of the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98-67, 97 Stat. 383).

Under those regulations, any person that is required to use Form 1042S (Income Subject to Withholding under Chapter 3 of the Internal Revenue Code), 1098 (Mortgage Interest Statement), 5498 (Individual Retirement Arrangement Information), 6248 (Annual Information Return of Windfall Profit Tax), 8027 (Employer's Annual Information Return of Tip Income and Allocated Tips), W-2 (Wage and Tax Statement), W-2G (Statement for Recipients of Certain Gambling Winnings), W-2P (Statement for Recipients of Annuities, Pensions, Retired Pay, or IRA Payments) or any form in the 1099 series (Information Returns) for the purpose of making a return must provide the information required by such form on magnetic media, unless (1) the person is a low-

volume filer with respect to the return or (2) the person is granted a waiver with respect to the return by the Internal Revenue Service. Failure to file a return on magnetic media when required to do so by the regulations is treated as a failure to file the return and may result in the imposition of a failure to file penalty.

In the case of a return that may be filed on a paper form, the return must be filed on a machine-readable form if applicable revenue procedures provide for a machine-readable form. These amendments clarify that the failure to file an information return on a machine-readable form when required to do so is treated as a failure to file the return and may result in the imposition of a failure to file penalty. However, in the case of a return that may be filed on a paper form for the 1986 calendar year (or an annual filing period beginning in 1986), a failure to file penalty will not apply if such return is timely filed on a paper form that is not machine-readable.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this 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 final regulations subject to 5 U.S.C. 553 (b) (B). Accordingly, the final 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 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 in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Adoption of Amendments to the Regulations

For the reasons set out in the preamble, Title 26, Chapter 1, Subchapter F, Part 301 of the Code of Federal Regulations is amended as set forth below:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for Part 301 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 301.6011–2 also issued under 26 U.S.C. 6011(e).

Par. 2. Section 301.6011–2 is amended by revising paragraph (f) to read as follows:

§ 301.6011–2 Required use of magnetic media.

* * * * *

(f) *Failure to file.* If a person fails to file a return on magnetic media when required to do so by section 6011(e) and this section, such person is deemed to have failed to file the return. In addition, if a person making returns on a paper form under paragraph (c) of this section for a calendar year (or annual filing period) beginning after December 31, 1986, fails to file a return on a machine-readable paper form when required to do so by this section, such person is deemed to have failed to file the return. See sections 6652, 6693, and 6721 for penalties for failure to file certain returns.

* * * * *

This Treasury decision clarifies that the failure to file an information return on a machine-readable paper form when required to do so is treated as a failure to file the return and may result in the imposition of a failure to file penalty. For this reason, it is found unnecessary 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.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: April 30, 1987.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 87–11271 Filed 5–20–87; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 60

[Order No. 1188–87]

Authorization of Federal Law Enforcement Officers To Request the Issuance of a Search Warrant

AGENCY: U.S. Department of Justice.

ACTION: Final rule.

SUMMARY: Rule 41(h) of the Federal Rules of Criminal Procedure authorizes the Attorney General to designate categories of federal law enforcement officers who may request issuance of search warrants. Previous authorizations were made by Order No. 510–73 (38 FR 7244, March 19, 1973), as amended by Order No. 521–73 (38 FR 18389, July 10, 1973), Order No. 826–79 (44 FR 21785, April 12, 1989), Order No. 844–79 (44 FR 46459, August 8, 1979), Order No. 960–81 (46 FR 52360, October 27, 1981), Order No. 1026–83 (48 FR 37377, August 18, 1983), Order No. 1137–86 51 FR 22282, June 19, 1986) and Order No. 1143–86 (51 FR 26878, July 28, 1986). This Order amends 28 CFR Part 60 by adding special agents of the Investigations Division of the Office of Inspector General, Small Business Administration; special agents of the Diplomatic Security Service of the Department of State; and special agents of the Office of Investigations and the Office of Labor Racketeering of the Office of Inspector General, Department of Labor, to the list of federal law enforcement officers who are authorized to request the issuance of search warrants under Rule 41, Federal Rules of Criminal Procedure.

EFFECTIVE DATE: May 12, 1987.

FOR FURTHER INFORMATION CONTACT: Roger B. Cubbage, Deputy Chief, Stanley A. Rothstein, Senior Legal Advisor, or Donald B. Nicholson, Attorney, General Litigation and Legal Advice Section, Criminal Division, Department of Justice, Washington, DC 20530 (202–786–4827).

SUPPLEMENTARY INFORMATION: This Order adds a new § 60.2(j) to 28 CFR Part 60 to add special agents of the Investigations Division of the Office of Inspector General, Small Business Administration, and a new § 60.2(k) to add special agents of the Office of Investigations and the Office of Labor Racketeering of the Office of Inspector General, Department of Labor. It adds

the Investigations Division of the Office of Inspector General, Small Business Administration as § 60.3(a)(10); the Diplomatic Security Service of the Department of State as § 60.3(a)(11); and the Office of Investigations and the Office of Labor Racketeering of the Office of Inspector General, Department of Labor, as § 60.3(a)(12). Because the material contained herein is a matter of Department of Justice practice and procedure, the provision of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date is inapplicable.

The Department of Justice has determined that this Order is not a major rule for purposes of either Executive Order 12291, or the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The index term for Part 60 of Chapter I of Title 28 is as follows:

List of Subjects in 28 CFR Part 60

Search warrants.

By virtue of the authority vested in me by Rule 41(h) of the Federal Rules of Criminal Procedure, Part 60 of Chapter I of Title 28, Code of Federal Regulations, is hereby amended as follows:

PART 60—[AMENDED]

1. The authority citation of Part 60 continues to read as follows:

Authority: Rule 41(h), Fed.R.Crim.P.

§ 60.2 [Amended]

2. Section 60.2 is amended by adding a new paragraph (j), to read as follows:

* * * * *

(j) Any special agent of the Investigations Division of the Office of Inspector General, Small Business Administration.

3. Section 60.2 is amended by adding a new paragraph (k), to read as follows:

* * * * *

(k) Any special agent of the Office of Investigations and the Office of Labor Racketeering of the Office of Inspector General, Department of Labor.

§ 60.3 [Amended]

4. Section 60.3 is amended by adding a new paragraph (a)(10) to read as follows:

(a) * * *

(10) Small Business Administration: Investigations Division of the Office of Inspector General.

* * * * *

5. Section 60.3 is amended by adding a new paragraph (a)(11) to read as follows:

(a) * * *

(11) Department of State: Diplomatic Security Service.

* * * * *

6. Section 60.3 is amended by adding a new paragraph (a)(12) to read as follows:

(a) * * *

(12) Department of Labor: Office of Investigations and Office of Labor Racketeering of the Office of Inspector General.

* * * * *

Dated: May 12, 1987.

Edwin Meese III,

Attorney General.

[FR Doc. 87-11638 Filed 5-20-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-87-01]

Special Local Regulations; 1987 Put In Bay Air Show, South Bass Island, OH—Lake Erie

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Annual Put In Bay Air Show which is to be conducted adjacent to Put In Bay Airport, South Bass Island on the 14th of June, 1987. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 14 June, 1987, and terminate on 15 June, 1987.

FOR FURTHER INFORMATION CONTACT: CWO Gerald M. Trackim, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: On April 6, 1987 the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (52 FR 10906). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are CWO Gerald M. Trackim, project officer, Office of Search and Rescue and LCDR M. V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The 1987 Put In Bay Air Show will be conducted adjacent to Put In Bay Airport, South Bass Island on the 14th of June, 1987. This event will have low flying aircraft demonstrations, high performance aircraft aerobatics, parachutists, and other events which could pose hazards to navigation in this area. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement prior to and during this event within this section of Put In Bay. A Coast Guard patrol vessel will be located at strategic locations along the regulated area to stop vessel traffic. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commanding Officer, Coast Guard Station Marblehead, Ohio).

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations.

PART 100—[AMENDED]

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 AND 33 CFR 100.35.

2. Part 100 is amended to add a termporary § 100.35-0901 to read as follows:

§ 100.35-0901 Put in Bay Air Show, South Bass Island—Lake Erie.

The following area will be closed to vessel navigation or anchorage from 12:00 P.M. (local time) until 4:00 P.M. on 14 June, 1987.

(a) *Restricted Area.* That portion of Lake Erie enclosed by a line running from a point at 41 degrees 38 minutes 18 seconds North, 82 degrees 49 minutes 25

seconds West to a point at 41 degrees 38 minutes 04 seconds North, 82 degrees 49 minutes 04 seconds West to a point at 41 degrees 37 minutes 39 seconds North, 82 degrees 49 minutes 33 seconds West to a point at 41 degrees 37 minutes 53 seconds North, 82 degrees 49 minutes 53 seconds West.

(b) *Special Local Regulations.* (1) Vessels desiring to transit the restricted area may do so only with the prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16(56.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a no wake speed and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants, or vessels of the patrol in the performance of their assigned duties.

(2) No vessel shall anchor or drift in the area restricted to navigation.

(3) A succession of sharp, short, signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessels; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) All persons in charge of, or operating vessels in the area covered by the above Special Local Regulations are required to promptly obey the directions of the Patrol Commander and the men acting under his instructions in connection with the enforcement of these Special Local Regulations.

(c) *Effective Dates.* These regulations will become effective on 14 June 1987 and terminate on 15 June 1987.

Dated: May 13, 1987.

L.W. Garrett,

Capt, U.S. Coast Guard Chief of Staff, Ninth Coast Guard District.

[FR Doc. 87-11653 Filed 5-20-87; 8:45 am]

BILLING CODE 4910-14-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket Nos. RM87-4 and MC87-1]

Amendment to Domestic Mail Classification Schedule; Third-Class Mail Maximum Size, 1986

Issued: May 13, 1987.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: In accordance with the May 5, 1987, adoption of the Postal Rate Commission's recommended Docket No. MC87-1 decision by the Governors of the Postal Service, the Commission is publishing the corresponding changes for the Domestic Mail Classification Schedule (DMCS). The DMCS is found as Appendix A to Subpart C of the Commission's rules of practice and procedure (39 CFR 3001.61 through 3001.68). This change enlarges by a small amount the maximum size limits for mail qualifying for carrier route presort third-class mail rates.

EFFECTIVE DATE: May 31, 1987.

ADDRESSES: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street, NW., Suite 300, Washington, DC 20268 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: On May 5, 1987, the Governors of the Postal Service approved a decision (Docket No. MC87-1) of the Commission recommending a change in section 300.030b of the Domestic Mail Classification Schedule (DMCS). The effective date for the change is May 31, 1987. Section 300.030b sets out the maximum size limitations for mail which can qualify for third-class carrier route presort rates.

On October 1, 1986, the Postal Service initiated a proceeding, pursuant to 39 U.S.C. 3623, requesting that the DMCS be amended to allow larger mail pieces to qualify for third-class carrier route presort rates. The Postal Service requested that the current limitations of 13.50 inches in length and 11.50 inches in width be increased to 14 inches in length and 11.75 inches in width. The Postal Service explained that the change was to accommodate mailers of total market coverage publications "plus issues," whose mailings exceeded the current size limits by small amounts.

The Commission invited interested parties to comment and participate in the proceeding. 51 FR 36764 (October 15, 1986). The parties submitted a nonunanimous settlement, and agreed upon the material to be entered into the evidentiary record. The Commission gave the parties an opportunity to file briefs and reply briefs. On April 2, 1987, the Commission issued a decision recommending the change.

The amendment to the DMCS which is published in this order reflects the Governors' May 5, 1987, decision. Consistent with the Commission's explanation in the rulemaking (Docket No. RM85-1) which led to the publication of the DMCS in the **Federal Register**, this addition is published as a final rule, since procedural safeguards and ample opportunities to have different viewpoints considered have already been afforded to all interested persons.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

List of Changes

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 3603, 3622, 3623, 84 Stat. 759-761; (5 U.S.C. 553), 80 Stat. 383, unless otherwise noted.

2. The following change in the Domestic Mail Classification Schedule published as Appendix A to Subpart C (39 CFR §§ 3001.61 through 3001.68) of the Commission's rules of practice and procedure is adopted:

Revise section 300.030b to read as follows:

* * * * *

b. Except as provided in section 300.030c, the maximum size for mail qualifying for the carrier route presort level is 14 inches in length, 11.75 inches in width, and 0.75 inch in thickness.

* * * * *

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 87-11594 Filed 5-20-87; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL 3205-3]

Vermont; Schedule of Compliance for Modification of Vermont's Hazardous Waste Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Vermont's compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986, EPA promulgated amendments to the deadlines for State program modfications, and published

requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Vermont to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Dorothy Allen, USEPA, Room 1903, JFK Federal Building, Boston, MA 02203, (617) 223–4925.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR 271.1–271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

B. Vermont

Vermont received final authorization of its hazardous waste program on January 21, 1985. See 50 FR 775, January 7, 1985. Today EPA is publishing a compliance schedule for Vermont to obtain program revisions for the following Federal program requirements:

(1) Biennial Report
48 FR 3977, January 28, 1983
(2) Permit Rules—Settlement Agreement
48 FR 39622, September 1, 1983
49 FR 17716, April 24, 1984
(3) Interim Status Standards—Applicability
48 FR 52718, November 22, 1983
49 FR 46095, November 21, 1984
(4) Chlorinated Aliphatic Hydrocarbon Listing
49 FR 5308, February 10, 1984
(5) National Uniform Manifest
49 FR 10490, March 20, 1984
(6) Listing Warfarin & Zinc Phosphide
49 FR 19922, May 10, 1984
(7) Lime Stabilized Pickle Liquor Sludge
49 FR 23284, June 5, 1984
(8) State Availability of Information HSWA § 3006(f), November 8, 1984
(9) Exclusion of Household Waste
49 FR 44980, November 13, 1984
(10) Corrections to Test Methods Manual
49 FR 47391, December 4, 1984
(11) Satellite Accumulation
49 FR 49571, December 20, 1984
(12) Redefinition of Solid Waste
50 FR 614, January 4, 1985
(13) Interim Status Standards for Landfills
50 FR 16044, April 23, 1985

The State has agreed to obtain the needed program revisions according to the following schedule:

(1) Statutory changes adopted.....June 15, 1987
(2) Draft rules and checklists submitted to EPA for review.....June 15, 1987
(3) Filing of proposed rules to adoption process.....Aug. 20, 1987
(4) Public hearing.....Oct. 1, 1987
(5) Rules submitted for legislative review.....Nov. 1, 1987
(6) Rules adopted/promulgated.....Jan. 1, 1987

Vermont expects to submit an application to EPA for authorization of the above mentioned program revisions by March 1, 1988.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: April 21, 1987.

Paul G. Keough,

Regional Administrator.

[FR Doc. 87–11641 Filed 5–20–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 271

[FRL–3206–2]

Alabama; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Alabama's Application for Final Authorization, Public Hearing, and Public Comment Period.

SUMMARY: Alabama has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Alabama's application and has tentatively determined that Alabama's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to the State to operate its program, subject to the limitations on its authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. Alabama's application for final authorization is available for public review and comment, and a public hearing will be held to solicit comments on the application if significant public interest is expressed.

If significant public interest is expressed, a public hearing will be scheduled for June 25, 1987. EPA reserves the right to cancel the public hearing if significant public interest is not communicated to EPA by telephone or in writing by June 19, 1987. EPA will determine by June 23, 1987 whether there is significant interest in holding the public hearing. Alabama will participate if the public hearing is held by EPA on this subject. All written comments on the Alabama final authorization application should be mailed to Otis Johnson, Jr., Chief, Waste Planning Section, U.S., EPA. The comments must be received by the close of business on June 19, 1987.

ADDRESSES: Copies of Alabama's Final Authorization Application are available from 8:00 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Alabama Department of Environmental Management, Land Division, 1751 Federal Drive, Montgomery, Alabama 36130; 205/271–7700; U.S., EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460; 202/382–5926; U.S. Region IV, Library, 345 Courtland St., NE., Atlanta, Georgia 30365; 404/347–4216.

Written comments on the application and written or telephone communication of interest in EPA's holding a public hearing on the Alabama application must be sent to: Otis Johnson, Jr., Chief, Waste Planning Section, US EPA, 345 Courtland Street., NE, Atlanta, Georgia 30365; 404/347–3016. If significant interest is expressed, EPA will hold the public hearing on June 25, 1987, 7:00 p.m., Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36109; 205/271–7700.

If you wish to find out whether or not EPA will hold a public hearing on Alabama's application, write or telephone the EPA contact person listed below after June 23, 1987, or telephone Mr. Daniel E. Cooper, Director, Land Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36109; 205/271–7700.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., Chief, Waste Planning Section , Environmental Protection Agency, 345 Courtland St., NE., Atlanta, Georgia 30365; 404/347–3016.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42, U.S.C. 6226(c)).

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42, U.S.C. 6226(b)). States need not have obtained Interim Authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR Part 271.

B. Alabama

On November 7, 1985, Alabama submitted an official application for final authorization. Alabama solicited public comment and held a public hearing May 15, 1986 on its revised application. The State received no written comments. Four oral comments were offered at the hearing. Two commenters expressed concern over the ADEM's authority to regulate radioactive material. Two others commended the ADEM for their diligence and efficiency in managing the program, and one of the two expressed concern over the State adopting regulations that are more stringent than EPA regulations.

In a letter dated May 27, 1986, the State offered the following responses to the comments: The ADEM was required to submit the State framework for managing all hazardous wastes as part of the application package, and was not attempting to regulate radioactive wastes in a manner inconsistent with EPA under the provisions of the RCRA as amended. In response to the comment concerning the State's adoption of regulations more stringent than EPA, the State responded that any inconsistencies with EPA are due to differences in State law. The nature of these comments did not require any change in the ADEM's application package.

EPA's comments on the final application were forwarded to the State on January 9, 1986. In its comments on the application, EPA requested that the State revise its "regulated unit" definition (§ 14.5-.06(1)(a)) to make it equivalent to the Federal standard (40 CFR 264.90(a)(2) as amended July 15, 1985). Alabama's regulation defines "regulated unit" as any unit that accepts hazardous waste after the effective date of the State's regulation, i.e., June 8, 1983. This definition needed to be changed to reflect the July 26, 1982 date in the Federal definition in order that Alabama might regulate the same universe as would EPA in the Federal program. The State agreed to make this regulatory change prior to EPA's final decision. Effective September 29, 1986, Alabama's regulations were changed to reflect the July 26, 1982 date.

EPA has tentatively determined that the State's program meets all the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Alabama to operate its program subject to the authority retained by EPA under HSWA.

In accordance with the regulatory requirements found at section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on its tentative determination on June 25, 1987 at 7:00 p.m., Alabama Department of Environmental Management in Montgomery, Alabama. The public may also submit written comments on EPA's tentative determination until June 19, 1987. Copies of Alabama's application are available for inspection and copying at the location indicated in the **"ADDRESSES"** section of this notice.

EPA will consider all public comments received at the hearing or during the public comment period. Issues raised by those comments may be the basis for a decision to deny final authorization to Alabama. EPA expects to make a final decision on whether or not to approve Alabama's program by [insert date 90 calendar days after date of publication in FR] and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

C. Effect of HSWA on Alabama's Authorization

Prior to the Hazardous and Solid Waste Amendments amending RCRA, a State with Final Authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized states. EPA is directed to carry out those requirements and prohibitions in authorized states, including the issuance of full or partial permits, until the State is granted authorization to do so. While states must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized states in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Alabama if final RCRA authorization is granted. To the extent the authorized state program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce these portions of the HSWA in Alabama until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized.

Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

Today's tentative determination does not include authorization of Alabama's program for any requirement implementing the HSWA. Any state requirement that is more stringent than a Federal HSWA provision will also remain in effect; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized states. That notice was published at 50 FR 28702-28755, July 15, 1985.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this

authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Alabama's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and record-keeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 22, 1987.

Jack E. Ravan,

Regional Administrator.

[FR Doc. 87-11736 Filed 5-20-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Nursing Student Loan Program; Definition of Exceptional Financial Need

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule amends existing regulations governing the Nursing Student Loan (NSL) program to include a definition of exceptional financial need. As required by Pub. L. 99-92, the Nurse Education Amendments of 1985, this definition is to be used to limit eligibility for NSL funds, for students who first enroll in the school of nursing after June 30, 1986, to those who exhibit exceptional financial need. A separate calculation, not affected by this regulation, is used to determine the amount, if any, of an NSL that an eligible student may receive.

EFFECTIVE DATE: These regulations are effective May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8-48, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443-4540.

SUPPLEMENTARY INFORMATION: Pub. L. 99-92, the Nurse Education Amendments of 1985, amended section 836(b) of the Public Health Service Act to require that students who enroll in a school of nursing after June 30, 1986, must be of exceptional financial need, as defined by regulations of the Secretary, to be eligible to receive NSL funds. Prior to this legislative amendment, NSL funds could be awarded to any eligible nursing student who demonstrated financial need. In accordance with this statutory requirement, the Department published a Notice of Proposed Rulemaking (NPRM) on September 12, 1986 (51 FR 32616), to establish a definition of exceptional financial need for the NSL program. The Department received 20 comments on this NPRM from schools and professional associations. These comments and the Department's responses follow.

Five respondents objected to the exceptional financial need requirement as a whole. Of these, several believed that implementing an exceptional financial need requirement for the NSL program was too restrictive and would create an additional barrier in the recruitment and enrollment of nursing students, thus compounding the existing problems of declining nursing enrollments and continued nursing shortages. There was also concern that the proposed definition would force the neediest students to receive NSL funds even if less expensive funds were available. Two respondents believed this requirement would create excessive burdens for institutions since it requires a deviation from the standard need analysis procedure. One respondent explained that financial aid offices currently must perform several different need analysis calculations to determine student eligibility for various financial aid programs, and that these regulations would add yet another calculation. One respondent indicated that at low-cost schools, most nursing students would no longer be eligible for NSL funds under this requirement. Finally, one respondent believed that since the NSL program does not receive new Federal capital contributions, there is no logical reason to preclude access by nursing students who have need but are not exceptionally needy. For these reasons, it was recommended that this proposed requirement not be implemented.

In response to these comments, the Department notes that the exceptional financial need requirement is mandated by Pub. L. 99-92 and therefore must be retained in these final regulations. The Department also clarifies that under this definition, a school is not required to give NSL funds to the neediest borrower if less expensive funds are available, but can instead use NSL funds for eligible borrowers who do not have access to less expensive aid. Finally, the Department notes that, to help keep the burden associated with this requirement to a minimum, the procedure for determining whether a borrower has exceptional financial need under these regulations is designed to use information already available to the school on the need analysis form.

Twelve respondents objected to making this requirement applicable to students who enroll after June 30, 1986. Most respondents noted that schools have already made awards to students for the 1986-87 academic year and that it would be burdensome, inappropriate, unfair, and unreasonable to require schools to recover awards already disbursed to students who are not eligible under the new regulations. Several alternatives to the June 30, 1986 effective date were recommended, including January 1, June 30, or July 1, 1987, or on or after the date the regulations are published. One respondent indicated that these regulations would burden financial aid offices by requiring them to monitor students' dates of entrance into the nursing school, and noted that the date of declaration of majors is not known to financial aid offices at 4-year liberal arts schools. It was therefore recommended that, if this requirement must be implemented, it should apply to all NSL recipients regardless of their date of entry into the school of nursing.

In response to these comments, the Department clarifies that the requirement that the exceptional financial need provision apply to students who enroll after June 30, 1986, is mandated by Pub. L. 99-92. The Department also notes that Policy Memorandum Number Nine, issued May 16, 1986, provided guidance for implementing this requirement until final regulations could be published. Since the June 30, 1986 date is required by statute, no change has been made in the final regulations. However, the Department further clarifies that the final regulations are not being implemented retroactively. Rather, schools must have complied with the "exceptional financial need" definition provided in Policy Memorandum Number Nine from June 30, 1986, until the effective date of these regulations.

and must comply with the requirements of these regulations thereafter.

Eleven respondents objected to the Department's proposed definition of "exceptional financial need." Four respondents preferred that the method for determining exceptional financial need be left to the professional judgment of the financial aid administrator. In response to these comments, the Department clarifies that Pub. L. 99-92 requires that a definition of exceptional financial need be established by the Secretary in regulations, and thus precludes the Department from leaving this definition entirely at the discretion of the financial aid administrator.

One respondent believed the neediest students should be those with the highest amounts of need once their resources are subtracted from the cost of attendance, and felt that whether resources are higher or lower than one-half the costs of attendance was irrelevant. This respondent proposed an exceptional financial need definition that gives highest NSL priority to students with the highest need, and indicated that such a definition would automatically exclude students with large resources and would be easy for schools to implement.

In response to this comment, the Department believes that this suggested definition of exceptional financial need is less desirable than the proposed definition, since a student who has a sizable amount of resources coupled with a high budget could be considered more needy than a student with no resources whose budget is lower. The Department continues to believe that determining exceptional financial need based on the amount of the student's resources generally is the best method of identifying the neediest students, and is therefore retaining this approach as proposed.

Four respondents believed that various exclusions—summer earnings, earnings during the school year, and veterans benefits—should be considered when determining the resources of a student, especially a graduate student, because they constitute a significant resource for students who receive them. One respondent believed that by excluding these earnings almost every student would be eligible. It was recommended that the Department include in the determination of resources all income and resources reported on the need analysis form, and use the need analysis calculation to determine the student/family contribution and the resulting financial need.

In response to the comment that summer and school year earnings should be considered in determining whether a student has exceptional need, the Department has excluded these earnings to assure that students who are able to work while pursuing their education are not denied eligibility for nursing student loans solely because they are working to contribute to their educational expenses. The Department has also retained the exclusion of veterans benefits since this exclusion assures that an educational benefit earned by serving in the United States Armed Forces would not deprive the student of eligibility for NSL funds. However, the Department reminds schools that in determining which eligible students will receive NSL funds, and the amount of NSL funds an eligible student will receive, the school must consider all resources of each student, including summer earnings, earnings during the school year, and veterans benefits.

Two other respondents suggested that the Department exclude resources available from Aid to Families with Dependent Children (AFDC) in determining whether a student has exceptional financial need. The Department agrees that exceptionally needy students should not be denied eligibility for NSL funds simply because they are receiving AFDC. Therefore, for purposes of determining eligibility, AFDC has been added as an exclusion in the final regulations.

One respondent supported the Department's intent to direct limited NSL funds to the highest need student, but noted that there may be occasions where a student who has resources that exceed one-half the cost of attendance does not have sufficient alternative sources of aid to fund his or her unmet need. This respondent suggested that if NSL funds are available after funding exceptionally needy students, financial aid administrators should have flexibility and discretion to use these funds to help a student who does not meet the exceptional need definition but whose circumstances may warrant special consideration. It was recommended that the regulations be modified to allow financial aid administrators discretion, provided that appropriate documentation is maintained.

The Department is sympathetic with this concern, but believes that Pub. L. 99-92, which requires exceptional financial need for students who enroll after June 30, 1986, and mandates that a definition of "exceptional financial need" be established in regulations, precludes an allowance in the regulations for exceptions to this requirement. Further, the Department expects that the exclusions that are to be made in determining exceptional financial need will help assure that this definition does not arbitrarily deny NSL funds to students who should be receiving them.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the requirements in this regulation are minimal in comparison to the overall resources of nursing schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that this regulation will not have a significant impact on a substantial number of nursing schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act

This rule does not affect the recordkeeping, reporting, or disclosure/notification requirements for the NSL program.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, Subpart D of 42 CFR Part 57 is amended as follows.

(*Catalog of Federal Domestic Assistance*, No. 13.364, Nursing Student Loan Program)

Dated: February 6, 1987.

Robert E. Windom,

Assistant Secretary for Health.

Approved: May 1, 1987.

Otis R. Bowen,

Secretary.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Subpart D—Nursing Student Loans

1. The authority for Subpart D is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 67 Stat. 631, (42 U.S.C. 216); secs. 835-842, Public Health

Service Act, 78 Stat. 913–916, 99 Stat. 397–400 (42 U.S.C. 297a–i).

2. Section 57.306 is amended by revising paragraphs (a)(1) (iii) and (iv) and adding a new paragraph (a)(1)(v) as follows:

§ 57.306 Eligibility and selection of nursing student loan applicants.

(a) * * *

(1) * * *

(iii) In need of the amount of the loan to pursue the course of study at the school;

(iv) Capable, in the opinion of the school, of maintaining good standing in the course of study; and

(v) In the case of students who enroll in the school after June 30, 1986, of exceptional financial need. A student will be considered to demonstrate exceptional financial need if the school determines that the student's resources, as described in paragraph (b)(2)(i) of this section, do not exceed one-half of the costs of attendance at the school. Summer earnings, educational loans, veterans (G.I.) benefits, earnings during the school year, and Aid to Families with Dependent Children (AFDC) will not be considered as resources in determining whether an applicant meets the eligibility criteria for exceptional financial need, but will be considered in determining the amount of funds a student may receive.

* * * * *

[FR Doc. 87–11389 Filed 5–20–87; 8:45 am]
BILLING CODE 4160–15–M

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42 CFR Part 57

Grants for Residency Training in the General Practice of Dentistry

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: These final regulations amend the regulations governing the program of "Grants for Residency Training in the General Practice of Dentistry" to include a definition of an "approved advanced educational program in the general practice of dentistry." They also conform the current regulations to amendments made by Pub. L. 99–129, the Health Professions Training Assistance Act of 1985, enacted on October 22, 1985, and by Pub. L. 99–239, the Compact of Free Association Act of 1985, enacted on January 14, 1986.

EFFECTIVE DATE: These regulations are effective on May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Richard G. Weaver, D.D.S., Chief, Dental Health Branch, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–15, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301–443–6837.

SUPPLEMENTARY INFORMATION: On October 7, 1986, the Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, published in the **Federal Register** (51 FR 35668), a Notice of Proposed Rulemaking (NPRM) to amend Subpart L of 42 CFR Part 57 to implement amendments to section 786(b) of the Public Health Service Act (the Act). Pub. L. 99–129, amended section 786(b) by including as an additional program an "approved advanced educational program in the general practice of dentistry." In accordance with the new provision, the Department proposed for inclusion in the regulations the following definition for an "approved advanced educational program in the general practice of dentistry:" an "approved advanced educational program in the general practice of dentistry" means an advanced educational program in general dentistry which has received an accreditation by the Commission on Dental Accreditation. This definition assures that programs of advanced education in general dentistry receiving grant support under section 786(b) of the Act will meet guidelines recognized and established by dental educators for content, structure, operation, staff and resources that are essential to program quality and achievement of objectives.

In the NPRM, the Department also proposed the following clarifying and ministerial revisions to the existing regulations:

1. Revise the title of 42 CFR Part 57, Subpart L, from "Grants for Residency Training in the General Practice of Dentistry" to "Grants for Residency Training and Advanced Education in the General Practice of Dentistry," and delete the word "resident(s)" and insert in lieu thereof the word "participant(s)" wherever it appears in the text.

2. Revise § 57.1102, *"Definitions."*, to reference the accrediting body by its new name and accreditation classifications, listed in two definitions within this section of the regulation, and add "Commonwealth of the" to the "Northern Mariana Islands" to the definition of "State."

3. Revise § 57.1104, *"How must an entity apply for a grant?"*, to substitute the word "stipend" for "salaries" in order to have consistency of terms in referencing the type of support of participants in the two types of programs which can now receive grant support.

4. Revise § 57.1107, *"How will grant awards be made?"*, to clarify that stipends for participants in an advanced educational program in general dentistry will be paid in accordance with Public Health Service postdoctoral stipend rates.

5. Revise the authority citation to correct a misprint in the *Code of Federal Regulations* and add the statutory citation from Pub. L. 99–129.

The public comment period on the proposed regulations closed on December 8, 1986. The Department received no comments. Accordingly, the amendments set out in the October 7, 1986 NPRM are adopted as proposed.

The final regulation also includes a number of additional technical and ministerial amendments to the existing regulations. These revisions are necessary in order to conform the regulations to amendments made by Pub. L. 99–129 and Pub. L. 99–239, and to incorporate current departmental boilerplate language. Since the amendments are of a ministerial and technical nature, the Secretary has determined pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures. The revisions are summarized below according to the section numbers and titles of the regulations:

1. Revise § 57.1102, *"Definitions."*, to amend the following terms:

(a) the definition of "School of dentistry" by striking out the reference to section "772(b)" which was amended by Pub. L. 99–129, and insert in lieu thereof section "701(5);" and

(b) the definition of "State" by inserting after the "Trust Territory of the Pacific Islands" those entities which, for purposes of this grant program, are viewed as a State, "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.", in accordance with Pub. L. 99–239.

2. Revise paragraphs (a) and (b) in § 57.1109, *"Purposes for which grant funds may be spent."*, to reflect current departmental boilerplate language.

3. Delete § 57.1110, *"What nondiscrimination requirements apply to grantees?"*, in its entirety and substitute a new § 57.1110 specifying additional Department regulations that apply to grantees.

4. Delete § 57.1111, *"How must grantees account for grant funds received?"* and § 57.1112, *"Applicability of 45 CFR Part 74."* in their entirety.

5. Redesignate § 57.1113, *What recordkeeping, audit, and inspection requirements apply to grantees?*" as § 57.1111; and § 57.1114, *"What additional conditions apply to grantees?"* as § 57.1112.

6. Cite the Office of Management and Budget (OMB) approval numbers in those sections which contain recordkeeping and reporting requirements.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

The recordkeeping and reporting requirements in § 57.1104 and § 57.1111 (formerly § 57.1113) and the application forms and instructions for this grant program have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (OMB approval numbers are 0915–0060 for the competing application form and 0915–0061 for the continuation application form).

List of Subjects in 42 CFR Part 57

Dental health, Education of the disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Student aid.

Accordingly, Subpart L of 42 CFR Part 57 is amended as set forth below:

(*Catalog of Federal Domestic Assistance*, No. 13.897, Grants for Residency Training in the General Practice of Dentistry)

Dated: April 6, 1987.

Robert E. Windom,

Assistant Secretary for Health.

Approved: May 5, 1987.

Otis R. Bowen,

Secretary.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

1. The authority citation for Subpart L is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 786(b) of the Public Health Service Act, 90 Stat. 2317, as amended by 99 Stat. 540–541 (42 U.S.C. 295g–6(b)).

2. The title of 42 CFR Part 57, Subpart L, is revised to read as follows:

Subpart L—Grants for Training and Advanced Education in the General Practice of Dentistry

3. Section 57.1101 is revised to read as follows:

§ 57.1101 To what projects do these regulations apply?

These regulations apply to the award of grants under section 786(b) of the Public Health Service Act to schools of dentistry and to accredited postgraduate dental training institutions to meet the cost of projects to:

(a) Plan, develop and operate an approved residency training program in the general practice of dentistry or an approved advanced educational program in the general practice of dentistry; and

(b) Provide financial assistance (in the form of traineeships and fellowships) to participants in such a program who are in need of financial assistance and who plan to practice general dentistry.

4. Section 57.1102 is amended by revising the following definitions as listed alphabetically and by adding the word "and" after the semicolon in paragraph (3) in the term "Practice of general dentistry."

§ 57.1102 Definitions.

* * * * *

"Accredited postgraduate dental training institution" means a public or private nonprofit institution which operates a postgraduate dental training program that has received an accreditation classification of "accreditation eligible," "preliminary provisional approval," "provisional approval," "conditional approval," or "approval" by the Commission on Dental Accreditation.

* * * * *

"Approved residency training program," "approved advanced educational program," or "program" means a general practice residency program or an advanced educational program in general dentistry which has received an accreditation classification of "accreditation eligible," "preliminary provisional approval," "provisional approval," "conditional approval," or "approval" by the Commission on Dental Accreditation.

* * * * *

"School of dentistry" means a public or private nonprofit school which provides training leading to a degree of doctor of dentistry or an equivalent degree and which is accredited as provided in section 701(5) of the Act.

* * * * *

"State" means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

5. Section 57.1104 is amended by revising paragraph (c) and by adding the OMB approval number at the end of the section to read as follows:

§ 57.1104 How must an entity apply for a grant?

* * * * *

(c) In addition to other pertinent information that the Secretary may require, an application for a grant under this subpart must contain: (1) A full and adequate description of the proposed project and of the manner in which the applicant intends to conduct the project and carry out the requirements of this subpart, in particular the requirements of § 57.1105; and (2) A budget justification for the funds requested. If the applicant requests funds for stipend support of participants, the applicant must provide evidence showing that income available from other sources, including income derived from services of the participants in the program, will be insufficient to pay their stipends and that grant funds will not be used to supplant other available funds.

(Approved by the Office of Management and Budget under control number 0915–0060)

6. Section 57.1105 is amended by removing the periods at the end of each paragraph except paragraph (f) and

inserting semicolons, and by revising paragraphs (a), (b), (e), and (f) to read as follows:

§ 57.1105 What requirements must a project meet?

* * * * *

(a) The project staff must plan, develop, and/or operate an approved residency or advanced educational program in the general practice of dentistry;

(b) Each project must have at least two participants enrolled in the training program;

* * * * *

(e) Each participant who receives stipend support must sign a statement of intent to work in the practice of general dentistry; and

(f) The training program, the performance of each participant, and the quality of patient care must be evaluated.

7. Section 57.1106 is amended by removing "and" after the semicolon in paragraph (d); by adding "; and" at the end of paragraph (e); and by adding a new paragraph (f) to read as follows:

§ 57.1106 What are the criteria for deciding which applications are to be funded?

* * * * *

(f) The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

8. Section 57.1107 is amended by revising paragraph (b) to read as follows:

§ 57.1107 How will grant awards be made?

* * * * *

(b) *Determination of grant amount.* The Secretary will determine the amount of any award under this subpart on the basis of his or her estimate of the sum necessary for the direct costs of the project plus an additional amount for indirect costs, if any, which the Secretary will calculate either: (1) On the basis of his or her estimate of the actual indirect costs of the project, or (2) on the basis of a percentage of all, or a portion of the estimated direct costs of the project when there are reasonable assurances that the use of the percentage will not exceed the approximate actual indirect costs. This award may include an estimated provisional amount for indirect costs or for designated direct costs (such as fringe benefit rates) subject to upward (within the limits of available funds) as well as downward adjustments to actual costs when the Secretary has determined the amount properly expended by the grantee for provisional items. In addition, in determining the amount of stipend support to be made available for the general practice residency program, the amount of any stipend must be limited to that portion of the annual amount normally paid to other residents by the applicant which the Secretary determines, on the basis of the documentation required in the application, cannot reasonably be paid from other available funds, including the incomes derived from the residents' services. For the advanced educational program in general dentistry, stipends for participants (who are postdoctoral students) must be paid in accordance with established Public Health Service postdoctoral stipend rates.

9. Section 57.1109 is amended by revising paragraphs (a) and (b) to read as follows:

§ 57.1109 Purposes for which grant funds may be spent.

(a) A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and these regulations.

(b) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

* * * * *

10. Section 57.1110 is revised to read as follows:

§ 57.1110 What additional Department regulations apply to grantees?

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 46—Protection of human subjects

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title

45 CFR Part 83—Regulation for the administration and enforcement of section 799A and 845 of the Public Health Service Act [1]

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

§§ 57.1111 and 57.1112 [Removed]

11. Section 57.1111 *How must grantees account for grant funds received?* and § 57.1112 *Applicability of 45 CFR Part 74.* are removed in their entirety.

12. Section 57.1113 is redesignated as § 57.1111 and the OMB approval number is added at the end of the section to read as follows:

§ 57.1111 What recordkeeping, audit, and inspection requirements apply to grantees?

* * * * *

(Approved by the Office of Management and Budget under control number 0915-0060.)

13. Section 57.1114 is redesignated as § 57.1112.

[FR Doc. 87-11390 Filed 5-20-87; 8:45 am]

BILLING CODE 4160-15-M

[1] Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94-484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94-63.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 60585-7090]

Shrimp Fishery of the Gulf of Mexico

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

ACTION: Final rule.

SUMMARY: NOAA issues this final rule amending the regulations for the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). NOAA is modifying for 1987 the area off Texas closed to trawling. This action will enable fishermen to harvest marketable-sized shrimp from an area that was open last year but was closed in previous years and allow NMFS to collect current data on fishing effort and patterns to evaluate the impact of the seasonal closure. The intended effect is efficient management of the shrimp fishery.

EFFECTIVE DATES: This rule is effective May 21, 1987; except that § 658.25(a) is suspended, and § 658.25(c) is effective from May 15, 1987, through August 14, 1987, and § 658.5(c) which is being issued prior to approval by the Office of Management and Budget (OMB) of the information collection requirements in § 658.5(c). When OMB approval is received, a notice will be published in the **Federal Register** making this section effective.

ADDRESSES: Copies of documents supporting this action may be obtained from William R. Turner, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the reporting requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: W. Perry Allen, 813-893-3722.

SUPPLEMENTARY INFORMATION:

Background

The FMP is implemented by regulations appearing at 50 CFR Part 658 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Section 658.25 provides for a 45- to 60-day closure to shrimping in the exclusive economic zone (EEZ) off Texas in conjunction with that State's closure of its waters. This cooperative closure is designed to delay harvest of juvenile brown shrimp, migrating from coastal estuaries to the deeper waters of the Gulf, until they reach a larger size, thus producing more pounds of more valuable shrimp.

The FMP permits the Director, Southeast Region, NMFS, to modify the geographical scope of the seasonal closure off Texas after consultation with the Gulf of Mexico Fishery Management Council (Council), consideration of specified criteria, and determination that benefits may be increased or adverse impacts decreased by the action. For the 1986 closure, the Council requested and NOAA issued emergency regulations which reduced the closure to 15 nautical miles from shore.

The proposed rule to reduce the closure to 15 nautical miles again in 1987 (52 FR 7283, March 10, 1987) contained an analysis and justification which is not repeated here.

Comments and Responses

Three comments were received addressing three basic issues. Sources of the comments included the U.S. Department of the Interior, the Texas Shrimp Association, and the U.S. Coast Guard.

Impact on Endangered Species

The U.S. Department of the Interior, Fish and Wildlife Service, stated that, due to the endangered status of the Kemp's ridley turtle, "the take and mortality of any adult ridley turtle from all causes must be eliminated." They further recommended that if the closure is reduced to 15 nautical miles, turtle excluder devices should be required in the full EEZ during the Texas closure. NOAA does not have authority under this regulatory amendment procedure to impose measures other than those needed to modify the geographical scope of the closure. However, the incidental take of turtles in shrimp trawls is being addressed by NOAA under the Endangered Species Act. Regulations being developed will require most vessels operating in less than ten fathoms off Texas to use turtle excluder gear in the near future. Since most of the waters inside the 10-fathom contour are within the 15-mile closed area, adverse impacts on turtles will be minimized.

Support for the 15-Nautical Mile Closure

The Texas Shrimp Association commented in favor of the 15-mile closure. They believe the reduced closure will contribute to achievement of the goals of the shrimp plan and provide comparative data essential for evaluating future closure options. NOAA agrees that the proposed 1987 closure will provide data critical to the proper long-term management of the resource and is, therefore, warranted.

Enforceability and Economic Benefits

The U.S. Coast Guard commented on the difficulty and expense of enforcing a 15-mile closure compared to closure of the entire EEZ off Texas. NOAA agrees that the partial closure is significantly more difficult to enforce and, thus, more expensive. The U.S. Coast Guard questioned whether the economic analysis of the 1986 closure considered the entire biological year for shrimp rather than just the May through August period. The economic analysis considered by the Council in the decisionmaking process included data showing a net economic benefit during the May through August 1986 period and a projection of net economic loss for the September through April period. That projection, however, was based, in part, on effort patterns in the fishery which may no longer be prevalent. Correction of this base-line data is one of the reasons for continuing the reduced closure in 1987. Concerns for enforceability and long-term net economic benefits notwithstanding, the Council concluded, and NOAA supports, that the overall benefits of a 15-mile closure for a second year in 1987 outweigh the costs. An analysis and justification for that conclusion was contained in the proposed rule.

Changes from the Proposed Rule

The effective dates for the suspension of § 658.25(a) and the new § 658.25(c) are changed to May 15 through August 14, 1987. In the proposed rule, the effective dates ran through July 31, 1987. Extension of the effective dates was necessary to cover the unlikely possibility of a closure which commences on June 15 and lasts 60 days.

In § 658.5, a new paragraph (c) is added to specify reporting requirements for shrimp fishermen whenever an endangered or threatened sea turtle is incidentally taken while trawling off Texas outside the closed area. Reports are to be submitted upon return to port following each fishing trip. NMFS will supply shrimp vessel operators with reporting forms and provide sea turtle identification guides and resuscitation techniques upon request. Reporting forms must be returned to the Director, NMFS Laboratory, 4700 Avenue U, Galveston, TX 77550.

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this rule is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

The final environmental impact statement (EIS) for the FMP was filed with the Environmental Protection Agency; its notice of availability was published March 13, 1981 (46 FR 16720). The Assistant Administrator prepared an environmental assessment for this rule and concluded that there will be no significant impact on the human environment.

A draft supplemental regulatory impact review was prepared for this rule and the Assistant Administrator determined that it is not major under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to OMB for review under section 3504(h) of the PRA.

The Assistant Administrator determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program. Texas, the only State involved, does not have an approved coastal zone management program.

The Administrative Procedure Act does not require that the effective date of this rule be delayed for 30 days. The only substantive change made by this rule relieves a restriction by reducing the geographical area subject to closure (5 U.S.C. 553(d)(1)).

List of Subjects in 50 CFR Part 658

Fisheries, Fishing.

Dated: May 18, 1987.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

For reasons set forth in the preamble, 50 CFR Part 658 is amended as follows:

1. The authority citation for Part 658 continues to read as follows:

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

2. Section 658.1 is amended by removing the second sentence of paragraph (c) and adding a new paragraph (d) to read as follows:

§ 658.1 Purpose and scope.

* * * * *

(d) Regulations governing the taking of endangered and threatened marine mammals and sea turtles appear in 50 CFR Parts 222 and 227.

3. Section 658.2 is amended by revising the introductory text, removing the definitions for *Act* and *Fishery Conservation Zone (FCZ)*, and adding the definitions of *Endangered and threatened marine mammals and sea turtles* and *Exclusive economic zone (EEZ)* in alphabetical order, to read as follows:

§ 658.2 Definitions.

In addition to the definitions in the Magnuson Act, the terms used in this part have the following meanings:

* * * * *

Endangered and threatened marine mammals and sea turtles means five whale species (sperm, fin, sei, humpback, and right) and five sea turtle species (Kemp's ridley, loggerhead, green, hawksbill, and leatherback).

Exclusive economic zone (EEZ) means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

* * * * *

4. In § 658.5, a new paragraph (c) is added, to be effective upon OMB approval until August 14, 1987, to read as follows:

§ 658.5 Reporting requirements.

* * * * *

(c) *Texas closure.* The owner or operator of any fishing vessel that fishes for, or lands, shrimp or any part thereof during the time of the Texas closure described at § 658.25(c), and who incidentally takes any endangered or threatened sea turtle, must provide the following information regarding any fishing trip to the Center Director or his designee within 24 hours after landing:

(1) Date;

(2) Shrimp vessel name;

(3) Species of turtle caught:

(i) Loggerhead;

(ii) Kemp's ridley; or

(iii) Other (specify, see turtle identification guide).

(4) Status of turtle when released:

(i) Alive; or

(ii) Dead.

(5) Did the turtle have a tag?

(6) If so, what was the tag number?

(7) Coordinates of capture (loran readings or latitude and longitude).

(8) Approximate tow time; and

(9) Additional comments.

5. Section § 658.7 is amended by revising the introductory text and designating it as paragraph (a), redesignating existing paragraphs (a) through (l) as (a)(1) through (a)(12), removing existing paragraph (m), and adding a new paragraph (b) to read as follows:

§ 658.7 Prohibitions.

(a) It is unlawful for any person to do any of the following:

* * * * *

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

6. Section 658.25 is amended by suspending paragraph (a) from May 15 through August 14, 1987, and adding a new paragraph (c), to be effective from May 15 through August 14, 1987, to read as follows:

§ 658.25 Texas closure.

* * * * *

(c) *Area and season restrictions.* Between June 1 and July 15, 1987, the area described in this paragraph is closed to all trawl fishing. The area is that part of the EEZ within 15 nautical miles of the baseline for the territorial sea (shore) off Texas west of a line connecting point A (29°32.1′ N. latitude, 93°47.7′ W. longitude) to point B (26°11.4′ N. latitude, 92°52.0′ W. longitude) as shown in Figure 3.

§§ 658.6, 658.7, 658.21 through 658.26 [Amended]

7. In addition to the amendments set forth above—

A. The words "fishery conservation zone" and the initials "FCZ" are removed and the initials "EEZ" are added in their place in the following places:

§ 658.6(a);
redesignated § 658.7(a) (3) and (4);
§ 658.21(b);
§ 658.22;
§ 658.23(a) and (b)(1)(i) introductory text and (i) (A) and (B), (b)(1)(ii), and (b)(1)(iii);
§ 658.24 (a) and (b);
§ 658.25(a) and
§ 658.26.

§ 658.6 [Amended]

B. The word "shall" is removed and the word "must" is added in its place in § 658.6 (a) and (b).

§§ 658.2, 658.7, and 658.9 [Amended]

C. The word "Magnuson" is added before the word "Act" in § 658.2 in paragraph (c) of the definition for *Authorized Officer;* in § 658.7 in the redesignated paragraphs (a)(1), (4), (6), and (8); and in § 658.9.

§ 658.23 [Amended]

D. In § 658.23, the introductory text is designated as paragraph (a).

[FR Doc. 87–11615 Filed 5–20–87; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 70845–7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Request for Comments on Closure

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

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA announces the closure of the commercial all-except-coho salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Falcon, Oregon, at midnight, May 18, 1987, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife (ODFW), and the Washington Department of Fisheries (WDF), that the commerical quota of 42,400 chinook salmon will be reached by that time. The closure is necessary to conform to the preseason announcement of 1987 management measures. This action is intended to ensure conservation of chinook salmon.

DATES: Closure of the EEZ from the U.S.-Canada border to Cape Falcon, Oregon, to commercial all-except-coho salmon fishing is effective at 2400 hours local time, May 18, 1987. Comments on this closure will be received until June 4, 1987.

ADDRESS: Comments may be submitted to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way N.E., Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206–526–6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries specify at 50 CFR 661.21(a)(1) that "When a quota for the commerical or the recreational fishery, or both, for any salmon species in any portion of the fishery managment area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). The 1987 commercial season for all salmon except coho from the U.S.-Canada border to Cape Falcon, Oregon, began on May 1, 1987 in two separate subareas. North of the Queets River, the season extends through the earlier of June 15 or the attainment of a quota of 42,400 chinook salmon north of Cape Falcon. South of the Queets River, the season extends through the earlier of May 31 or the attainment of a quota of 42,400 chinook north of Cape Falcon.

Based on the best available information, the commercial fishery catch from the U.S.-Canada border to Cape Falcon is projected to reach the 42,400 chinook quota by midnight, May 18, 1987.

Therefore, NOAA issues this notice to close the commercial all-except-coho fishery in the EEZ from the U.S.-Canada border to Cape Falcon, Oregon, effective midnight, May 18, 1987. This notice does not apply to treaty Indian fisheries nor to other fisheries which may be operating in other areas.

The Regional Director consulted with the Chairman of the Pacific Fishery Management Council and representatives of ODFW and WDF regarding a closure of the commercial all-except-coho fishery north of Cape Falcon. The representatives of ODFW and WDF confirmed that Oregon and Washington will close the commercial fishery in state waters adjacent to this area of the EEZ effective midnight, May 18, 1987.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: May 18, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–11663 Filed 5–18–87; 4:46 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 98
Thursday, May 21, 1987

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its regulations concerning employee and annuitant deductions and agency contributions to the Civil Service Retirement and Disability Fund (Fund). The revisions are necessary to eliminate those instances when OPM does not receive the prescribed deduction or contribution because an agency has inadvertently failed to withhold some or all of the employee's retirement deductions or failed to reduce the salary of a reemployed annuitant.

DATE: Comments must be received on or before July 20, 1987.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rochester, (202) 632–4682.

SUPPLEMENTARY INFORMATION:

Agency Contributions

In some circumstances, agencies inadvertently fail to withhold, from an individual's pay, some or all of the appropriate percentage of employee retirement deductions specified by 5 U.S.C. 8334(a)(1). These proposed regulations would require an agency that made such an error to compute and submit to OPM the correct agency contribution. More specifically, if the agency erred by taking only a partial employee deduction, and therefore submitted only a partial matching agency contribution, it must submit the unpaid portion of the required agency contribution (i.e., an amount equal to the difference between the partial agency contribution and the agency contribution that would have been submitted if the error had not made.)

If the agency neither withheld any employee deductions, nor made any agency contribution, it must submit the entire egency contribution (i.e., an amount equal to the full amount of the agency contribution that would have been submitted if the error had not been made). The agency must submit its contribution as soon as possible, but no later than 60 calendar days after determining the amount of the contribution due without regard to the employee's decision about the employee deductions.

In the past, we treated service for which employee retirement deductions were not taken through administrative error the same as we treated service for which the failure to take employee deductions was correct. However, we have reconsidered our past policy in light of recent changes in the law (e.g., deposits are now required before an individual can receive credit for nondeduction service) and several decisions by the General Accounting Office (see B–20220, dated December 23, 1981) holding that the employee's records should be corrected and the required deductions and contributions made to the Fund.

Based upon our reconsideration of this area, we concluded that an agency should not be excused from paying the agency contribution because of an administrative error. Accordingly, these regulations propose that the agency's submission of its contribution be independent of any election the employee makes about payment of the employee deduction.

Employee Deductions—Some Deductions Versus No Deductions

Under these proposed regulations, agency action to collect the employee's retirement deductions would depend on whether the agency withheld some or none of the required employee deductions. When no employee deductions were withheld from an individual's basic pay, payment of the employee share is optional under 5 U.S.C. 8334(c0. These regulations propose a change in the method of getting the employee's deduction into the Fund. They would eliminate our past policy—requiring the employee to pay the deposit plus any interest directly to OPM by submitting the appropriate application, Standard Form 2803 (Application to Make Deposit or Redeposit). Instead, the employee could have the agency that employed him or her during the period when deductions were not withheld collect the overpayment of pay (if necessary), submit the deductions to OPM as paid, and correct his or her records in accordance with OPM procedures for adjusting errors in retirement deductions. (Note: Making a deposit directly to OPM remains an option, if the employee does not choose to have the agency correct his or her records.)

In those cases where repayment of a salary overpayment is necesssary, if the employee has not completed the repayment to the agency so that his or her records can be corrected prior to the final adjudication of his or her application for annuity, the period of service will be treated like the nondeduction service described in § 831.303.

If the agency withheld some of the required deductions, if must submit the balance of the employee's deductions to OPM. Because the elective deposit provision in 5 U.S.C. 8334(c) has consistently been interpreted to apply only in situations where *none* of the employee's retirement deductions were withheld, the employee does not have any options regarding the payment of the employee deduction when the agency has made a partial withholding.

Overpayments of Pay and Waivers Under 5 U.S.C. 5584

Ordinarily, when an agency fails to withhold the appropriate amount of deductions from basic pay, the employee receives an overpayment of pay. This is always the case when an agency errs by taking partial retirement deductions from an employee's basic pay. When an agency fails to take *any* deductions, however, there may or may not be an overpayment of pay. If the employee decides to have the period of service treated like nondeduction service described in § 831.303 rather than having the agency correct its administrative error, there will *not* be an overpayment of pay. Conversely, there will be an overpayment of pay if the employee wishes the agency to correct the error.

Overpayments are subject to collection under the procedures in 5 U.S.C. 55124, 5 CFR 550.1101 *et seq.*, and the Federal Claims Collection Standards (4 CFR 101.1 *et seq.*, or they may be considered for waiver under 5 U.S.C 5584 or any other applicable waiver statute. Whenever the resulting overpayment of pay it waived, however, these regulations would require the agency to submit the employee's share of the retirement contributions as well as the matching agency contribution.

This agency should correct the employee's records and post the total amount of the employee deductions paid on the SF 2806 (1) when the employee completes the repayment of any overpayment of pay that has occurred (when a waiver in not granted), or (2) when the employing agency waives the salary overpayment. Instructions for correcting the employee's records and submitting the deductions to OPM will be issued in a future FPM letter.

Reemployed Annuitants

Section 8344(a) of title 5, United States Code, requires that the salary of a reemployed annuitant be reduced by "an amount equal to the annuity allocable to the period of actual employment." The amount deducted must be remitted to OPM for deposit to the Fund.

When the employing agency fails to reduce the annuitant's pay as required, an overpayment of salary accrues. These proposed regulations would make it clear that the employing agency has the responsibility for collecting (or waiving) the salary overpayment. The agency is also responsible for submitting the proper deduction to OPM even when the overpayment is waived.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that, within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they would affect only Federal employees.

List of Subjects in 5 CFR Part 831

Administrative practice and procedures, Claims, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM proposes to amend 5 CFR Part 831 as follows:

PART 831—RETIREMENT

1. The authority citation for Subpart A of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2).

Subpart A—Administration and General Provisions

2. Subpart A of Part 831 is amended by adding a new § 831.111 to read as follows:

§ 831.111 Employee deductions and agency contributions.

(a) *Agency share.* When an agency fails to withhold some or all of an employee deduction under 5 U.S.C. 8334(a) for any pay period, the agency is still responsible for submitting the correct agency contribution to OPM. The agency must submit as the agency share, a payment equal to the amount that would have been submitted if the error had not been made (or a payment equal to the difference between the amount already submitted as the agency share and the amount that should have been submitted). The payment should be submitted to OPM via the SF 2812 as soon as possible, but no more than 60 days after determining the amount of the agency contribution due.

(b) *Employee share.* (1) If, through administrative error, an agency did not withhold any of the employee deductions required by 5 U.S.C. 8334(a) for any pay period, the employee may, at his or her option—

(i) Request the agency that employed him or her when the error was made to correct his or her records and arrange to pay any resulting overpayment of pay to the agency (unless it is waived);

(ii) Pay the deposit plus any applicable interest (under certain conditions, the deposit may be made at any time until the final adjudication of his or her application for retirement) directly to OPM by submitting SF 2803; or

(iii) Have the period of service treated like the nondeduction service described in § 831.303.

(2) when the agency withholds part of the required employee deductions, the balance must be submitted to OPM via SF 2812 as soon as possible, but no more than 60 days after determining the amount of contribution due. The agency must correct its error. The employee does not have the option to make a deposit to OPM when partial deductions have been withheld.

(3) If the agency waives the employee's repayment of the salary overpayment that resulted from the administrative error, the agency must also submit the employee's share of the unpaid contributions to OPM via SF 2812.

3. The authority citation for Subpart H of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347.

Subpart H—Reemployment of Retired Employees

4. Subpart H of Part 831 is amended by redesignating §§ 831.802 and 831.803 as §§831.803 and 831.804 respectively and adding a new § 831.802, to read as follows:

§ 831.802 Reduction in pay for reemployed annuitants.

(a) Pursuant to § 8344(a) of title 5, United States Code, an employing agency must reduce the pay of a reemployed annuitant by the amount of annuity allocable to the period of actual employment and remit the deducted amounts to OPM via SF 2812.

(b) When the employing agency fails to withhold some or all of the deduction required by section 8344(a), the employee has received an overpayment of pay. The employing agency must collect the overpayment of pay (unless it is waived under 5 U.S.C. 5584 or some other applicable statute) and remit the proper funds to OPM via SF 2812 as soon as possible, but no more than 60 days after determining the amount of the deduction that should have been made.

(c) If the employing agency waives the annuitant's repayment of the salary overpayment, it must submit an amount equal to the correct deduction from pay (or the balance due in the case of a partial deduction) to OPM via SF 2812 as soon as possible, but no more than 60 days after determining the amount of the deduction that should have been made.

[FR Doc. 87-11689 Filed 5-20-87; 8:45 am]
BILLING CODE 6325-01-M

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5 CFR Part 890

Credit for CHAMPUS Coverage for the Purpose of Continuing an FEHB Enrollment During Retirement

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing to incorporate in the Federal Employees Health Benefits (FEHB) regulations a change in administrative practice concerning the crediting of coverage under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) for the purpose of continuing an FEHB enrollment during retirement. For many years, OPM and its predecessor agency, the Civil Service Commission, counted CHAMPUS coverage toward the FEHB statutory participation requirements for continuing an FEHB enrollment during retirement. Since there appears to be no firm legal basis for ever having credited CHAMPUS time under the FEHB law for that purpose, OMP is proposing to discontinue that administrative practice after a lengthy phase-in period.

DATE: Comments must be received on or before July 20, 1987.

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

FOR FURTHER INFORMATION CONTACT: John Ray, (202) 632–4634.

SUPPLEMENTARY INFORMATION: OPM is proposing to incorporate in the FEHB regulations a change in administrative practice concerning the crediting of coverage under CHAMPUS for the purposes of section 8905(b) of Title 5, United States Code. Section 8905(b) of Title 5, United States Code, sets forth the enrollment or coverage requirements a retiring employee must meet in order to continue his or her FEHB coverage during retirement. Briefly, an employee, at the time of his or her retirement, must have been enrolled in an FEHB plan for at least 5 years immediately preceding retirement or for the full period(s) of time FEHB coverage was available, if enrolled for less than 5 years, including time covered by an FEHB enrollment as a family member.

The Civil Service Commission (the predecessor to OPM) broadly interpreted the enrollment or coverage requirements of section 8905(b) of Title 5 to include coverage under CHAMPUS as partially-qualifying time for the purpose of continuing FEHB enrollments during retirement. At the time the FEHB law was enacted in 1959, there were no Government-sponsored health programs other than the program of health benefits coverage for dependents of military personnel known subsequently as Military Medicare. The Civil Service Commission did not require an individual to have coverage under an FEHB plan for the 5 years or from the first opportunity specified in the FEHB law to continue coverage during retirement if that individual had been covered by Military Medicare (later referred to as CHAMPUS) for a portion of the time in question. Even though CHAMPUS time could be substituted for a portion of the 5 years required by the FEHB law, it could not replace FEHB participation entirely. At a minimum, the retiring employee had to be enrolled in an FEHB plan at the time of his or her retirement in order to "continue his enrollment" as specified in the law. The broad interpretation of permitting CHAMPUS coverage to be substituted, in part, for FEHB coverage, without any real legal basis, was continued by the Commission's successor agency, OPM until the present time.

OPM is proposing to discontinue the adminstrative practice of substituting CHAMPUS coverage for FEHB coverage, with respect to the requirements for continuation of FEHB coverage during retirement, after a considerable phase-in period. There is simply no legal basis for continuing this practice and no apparently overriding need to seek legislative authority to continue the practice.

OPM's proposal to eliminate CHAMPUS coverage from consideration of the requirements of section 8905(b) of Title 5 would not become effective until January 1, 1993. Therefore, individuals who are within 5 years of retirement and are relying in part on CHAMPUS coverage to retain their FEHB enrollments at the time of retirement will not be affected at all by this change. However, those individuals who retire on an immediate annuity which commences on or after January 1, 1993, more than 5 years from now, will have to take the necessary actions in the meantime to ensure they meet the specific participation requirements of section 8905(b) of Title 5 at the time of retirement.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act.

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will affect only Federal employees seeking to continue their FEHB enrollments during retirement.

List of Subjects in 5 CFR Part 890

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

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM proposes to amend 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of Pub. L. 95–454, 92 Stat. 1112; Sec. 890.301 also issued under 5 U.S.C 8905(b); Sec. 890.302 also issued under 5 U.S.C. 8901(5) and 5 U.S.C. 8901(9); Sec. 890.701 also issued under 5 U.S.C. 8902(m)(2); Subpart H also issued under Title I of Pub. L. 98–615, 98 Stat. 3195, and Title II of Pub. L. 99–251.

2. In § 890.303, a new paragraph (f) is added to read as follows:

§ 890.303 Continuation of enrollment.

* * * * *

(f) An employee who retires on an immediate annuity and meets the enrollment or coverage requirements of section 8905(b) of Title 5, United States Code, may continue his or her enrollment under this Part during retirement. However, individuals retiring on an immediate annuity which commences on or after January 1, 1993, will not be able count periods of coverage under CHAMPUS (the Civilian Health and Medical Program of the Uniformed Services) toward the enrollment or coverage requirements of section 8905(b) of Title 5, United States Code, for continuation purposes.

[FR Doc. 87–11690 Filed 5–20–87; 8:45 am]

BILLING CODE 6325–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 790

Freedom of Information Act; Description of Office, Disclosure of Official Records, Availability of Information, Promulgation of Regulations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rules.

SUMMARY: This proposed regulation implements recent amendments to the Freedom of Information Act (FOIA). The

amendments concern exemption 7 of the FOIA (relating to law enforcement records) and the provisions of the FOIA concerning fees and fee waivers. The proposed regulation and NCUA's FOIA regulations in general, affect public disclosure of information by the NCUA, and have no effect on the daily operations of credit unions.

DATE: Comments must be received on or before June 23, 1987.

ADDRESS: Send comments to Becky Baker, Acting Secretary, NCUA Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie Ulan, Staff Attorney, NCUA, Office of General Counsel, at the above address, or telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION:

Background and General Information

The Freedom of Information Reform Act of 1986 (Pub. L. 99–570) (FOIRA) amended the FOIA (5 U.S.C. 552) by modifying the terms of exemption 7 and by supplying new provisions relating to the charging and waiving of fees. FOIRA specifically required that Federal agencies issue regulations, pursuant to notice and public comment, specifying a schedule of fees and procedures for determining when fees should be waived or reduced. The fee schedule must conform to guidelines issued by the Office of Management and Budget (OMB).

FOIRA stated that agencies should promulgate regulations by April 25, 1987 (the 180th day after its enactment). Because of the date of publication of OMB guidelines (March 27, 1987), the NCUA Board's May 8 meeting was the earliest that a proposed regulation could be promulgated. A final rule will be issued expeditiously after the expiration of the 30-day comment period on the proposed regulation. Fees, fee waivers, and reductions of fees processed by NCUA on or after April 25, 1987, will be made pursuant to the current § 790.7 of NCUA's Rules and Regulations or this proposed regulation, whichever is more beneficial to the requester.

The change to exemption 7 of the Freedom of Information Act is incorporated verbatim into NCUA's Rules and Regulations (*see* proposed § 790.4(a)(7) of NCUA Regulations). Exemption 7 exempts from disclosure certain records or information compiled for law enforcement purposes under the FOIA. The amended version of exemption 7 adds language to allow for exemption based on a reasonable expectation of harm from disclosure. The amended exemption 7 also adds explanatory language describing a confidential source (amendment includes state, local, and foreign agencies and private institutions that have provided information on a confidential basis). Lastly, the proposed change provides for exemption from disclosure if it "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." Exemption 7 is rarely used by NCUA in processing FOIA requests.

The basic change made by the FOIRA to the fee provisions is the establishment of five classes of FOIA requesters: (1) Commercial; (2) educational institutions; (3) noncommercial scientific institutions; (4) representatives of the news media; and (5) all others. Commercial requesters will be charged for the direct costs of review, search and duplication of records. Educational institutions, noncommercial scientific institutions and representatives of the news media will be charged fees for direct costs of duplication, with the first 100 pages provided free of charge. All other requesters will be charged fees for direct costs of search and duplication, with two hours of free search time and 100 pages of duplication provided free of charge. Prior to the FOIRA, requesters were not classified and charges were made in all cases for search and duplication.

Additionally, the FOIRA amended the FOIA with regard to waiver or reduction of fees. Under FOIRA, documents are to be furnished without a fee or with a reduced fee if "disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." Before the amendments, the waiver or reduction of fees occured when NCUA determined that such waiver or reduction was in the "public interest because furnishing the information can be considered as primarily benefitting the general public."

NCUA's proposed regulation is largely self-explanatory. The regulation contains the basic requirements of the FOIRA amendments and OMB's guidelines. Readers desiring further information are referred to the proposed and final guidelines issued by OMB (*see* 52 FR 1982, 10012, January 16, 1987 and March 27, 1987) for a full explanation of all sections except § 740.7(b)(7) (waiver and/or reduction of fees). While the numbering system and titles of some subsections in NCUA's proposed regulation differ from the OMB guidelines, the substance of the rule is generally the same. Proposed § 740.7(b)(7) is based upon guidelines issued by the Department of Justice. The Department of Justice guidelines were not published in the **Federal Register**, but are available upon request from NCUA at the address listed above.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed regulations do not place burdens on requesters of information under the FOIA. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The proposed regulation does not contain any collection requirements. It does not impose burdens on requesters of information under the FOIA.

List of Subjects in 12 CFR Part 790

Credit unions, FOIA exemptions, Criminal investigations, Schedule of fees, Waiver or reductions of fees.

By the National Credit Union Administration on May 8, 1987.

Becky Baker,

Acting Secretary, NCUA Board.

Accordingly, NCUA proposes to amend its regulations as follows:

1. The authority citation for Part 790 continues to read as follows:

Authority: Sec. 120, 73 Stat. 635 (12 U.S.C. 1789), unless otherwise noted.

2. Section 790.4(a)(7) is revised to read:

§ 790.4 Unpublished, confidential and privileged information.

(a) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: (i) Could reasonably be expected to interfere with enforcement proceedings, (ii) would deprive a person of a right to a fair trial or an impartial adjudication, (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (iv) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished

information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation on or by an agency conducting a lawful national security intelligence investigation, information furnished by the confidential source, (v) would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (vi) could reasonably be expected to endanger the life or physical safety of any individual. This includes but is not limited to, information relating to enforcement proceedings upon which the Administration has acted or will act in the future.

3. Section 790.7 is revised to read:

§ 790.7 Fees for Document Search, Review and Duplication; Waiver and Reduction of Fees.

(a) *Definitions*—(1) *Direct costs* means those expenditures which NCUA actually incurs in searching for, duplicating and reviewing documents to respond to a FOIA request.

(2) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(3) *Duplication* means the process of making a copy of a document necessary to respond to FOIA request.

(4) *Review* means the process of examining documents located in response to a request that is for a commercial use (*see* § 790.7(a)(5)) to determine whether any portion of any document located is permitted to be withheld and processing such documents for disclosure.

(5) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(6) *Educational institution* means a preschool, an elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) *Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is referenced in § 790.7(a)(5), and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public.

(b) *Fees to be charged.* NCUA will charge fees that recoup the full allowable direct costs it incurs. NCUA may contract with the private sector to locate, reproduce and/or disseminate records. Fees are subject to change as costs ihcrease. In no case will NCUA contract out responsibilities which the FOIA provides that it alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(1) *Manual searches and review*—NCUA will charge fees at the following rates for manual searches for and review of records:

(i) If search/review is done by clerical staff the hourly rate for GS–5, step 1 plus 16 percent of the rate to cover benefits;

(ii) If search/review is done by professional staff the hourly rate for GS–13, step 1, plus 16 percent of that rate to cover benefits.

(2) *Computer searches*—NCUA will charge fees at the hourly rate for GS–13, step 1, plus 16 percent of that rate to cover benefits plus the hourly cost of operating the computer for computer searches for records.

(3) *Duplication of records*—

(i) The per-page fee for paper copy reproduction document is $.25;

(ii) The fee for documents generated by computer is the hourly fee for the computer operator plus the cost of materials (computer paper, tapes, labels, etc).

(iii) If any other method of duplication is used, NCUA will charge the actual direct cost of duplicating the documents.

(4) *Fees to exceed $25*—If NCUA estimates that duplication and/or search fees are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. The requester will then have the opportunity to confer with NCUA personnel with the object of reformulating the request to meet his/her needs at a lower cost.

(5) *Other services*—Complying with requests for special services is entirely at the discretion of NCUA. NCUA will recover the full costs of providing such services to the extent it elects to provide them.

(6) *Restriction on assessing fees*—For all requesters except those seeking documents for a commercial use, NCUA will provide the first 100 pages of duplication and the first two hours of search time without charge. NCUA will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(7) *Waiving or reducing fees*—NCUA shall waive or reduce fees under this section whenever disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(i) NCUA will make a determination of whether the public interest requirement above is met based on the following factors:

(A) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(B) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(C) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding;

(D) The significance of the contribution to the public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(ii) If the public interest requirement is met, NCUA will make a determination on the commercial interest requirement based upon the following factors:

(A) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(B) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(iii) If the required public interest exists and the requester's commercial interest is not primary in comparison to it, NCUA will waive or reduce fees.

(c) *Categories of requesters*—(1) Commercial use requesters—NCUA will assess fees for commercial use requesters which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents.

(2) Educational and non-commercial scientific institution requesters—NCUA shall provide documents to requesters in this category for the cost of reproduction alone, excluding fees for the first 100 pages.

(3) Requesters who are representative of the news media—NCUA shall provide documents to requesters in this category for the cost of reproduction alone, excluding fees for the first 100 pages.

(4) All other requesters—NCUA shall charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without a fee.

(5) All requesters must specifically describe records sought.

(d) *Interest on unpaid fees.* NCUA may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will be at the rate prescribed in Section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(e) *Fees for unsuccessful search and review.* NCUA may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(f) *Aggregating requests.* A requester(s) may not file multiple requests each seeking portions of a document or documents, solely in order to avoid payment of fees. If this is done, NCUA may aggregate any such requests and charge accordingly.

(g) *Advance payment of fees.* NCUA will require a requester to make an assurance of payment or an advance payment only when:

(1) NCUA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. NCUA will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion. NCUA may require the requester to pay the full amount owed plus any applicable interest as provided in § 790.7(d) or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before NCUA begins to process a new request or a pending request from that requester.

(3) When NCUA acts under §§ 790.7(g) (1) or (2), the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after NCUA has received the fee payments described.

[FR Doc. 87-11492 Filed 5-20-87; 8:45 am]
BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loans; Small Business Lending Companies

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule change would treat a Small Business Lending Company (SBLC) as other lenders which participate with the Small Business Administration (SBA) in making SBA guaranteed loans. It would also clarify that an SBLC could participate in the secondary market and could assemble pools comprised of SBA guaranteed portions of loans made by others as well as pools of loans it has generated.

DATE: Comments must be submitted on or before June 22, 1987.

ADDRESS: Comments should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Room 800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Danny J. Gibb, Director, Office of Financial Institutions, 202-653-2585.

SUPPLEMENTARY INFORMATION: An SBLC is supervised and examined by SBA and is not subject to regulations by any other State or Federal regulatory authority. As of January 1982, SBA stopped approving entities as SBLCs, and as of December 31, 1986, there were sixteen (16) SBLCs, eight (8) of which are considered to be active SBA participating lenders. When SBLCs were first authorized, the Agency required them to be engaged solely in the making of SBA loans. By its nature, an SBLC is not a depository institution. Consequently, it partially renews its SBA lending funds by participating in the secondary market for SBA loans. When the Agency received statutory authority to allow lenders to pool the SBA guaranteed portions of loans, it included SBLCs in the definition of pool assembler (see § 120.702(f) of SBA regulations, 13 CFR 120.702(f)). This has resulted in an inadvertent inconsistency between the referenced pool assembler regulations and the narrow stated business purpose for an SBLC in § 120.302-1(a) of SBA regulations (13 CFR 120.302-1(a)) which limits an SBA to "making" SBA loans.

The Agency has determined that an SBLC should be treated similar to other SBA participating lenders in making, servicing and liquidating SBA guaranteed loans. The proposed regulation would accomplish this by deleting from the regulation the delimitation of being engaged "solely" in the making of SBA loans and inserting therein a general reference so that SBLCs would be treated as other SBA participating lenders, pursuant to their contractural arrangement (which incorporate the rules and regulations of the Agency). Further, the proposed regulations would recognize an SBLC's need to participate in the SBA secondary market (which they are already doing) and would conform the regulations on SBLCs to the regulation on assembling pools.

For the purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this proposed rule is not likely to have a significant economic impact on a substantial number of small entities.

SBA certifies that this proposed rule does not constitute a major rule for the purpose of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more.

List of Subjects in 13 CFR Part 120

Loan programs—business, Small business.

Accordingly, pursuant to the authority contained in § 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend Part 120, Chapter I, Title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for Part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Section 120.302–1 is amended by revising paragraph (a) to read as follows:

§ 120.302–1 Small business lending companies.

* * * * *

(a) **Business Purposes:** Be a corporation (profit or nonprofit) engaged in the making of loans under section 7(a) [except section 7(a)(13)] of the Act in participation with SBA pursuant to the terms and conditions contained in the Loan Guaranty Agreements (Deferred Participation), SBA Forms 750, 750B, 1186, and 1347, as applicable. An SBLC may also participate in the SBA secondary market as explained in §§ 120.701 and 120.801(b) of this Part 120 and may be a Pool Assembler (as defined in § 120.702(f)) of SBA guaranteed loans it has made or acquired.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: May 13, 1987

James Abdnor,

Administrator.

[FR Doc. 87–11687 Filed 5–20–87; 8:45 am]

BILLING CODE 8025–01–M

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13 CFR Part 142

Program Fraud Civil Remedies Act Regulations

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This regulation proposes to implement the Program Fraud Civil Remedies Act of 1986 (PFCRA) which established for certain agencies an administrative remedy for fraudulent claims or statements made to such agencies and required that agencies publish regulations by April 21, 1987. Since the PFCRA contemplated that the participating agencies promulgate substantially similar regulations, this regulation is, in large part, identical to a model developed for the participating agencies by a Task Force headed by the Department of Health and Human Services. The regulation establishes procedures for imposing liability under the PFCRA of up to $5,000 per claim and double damages on anyone who, with knowledge or reason to know, submits a false, fictitious or fraudulent claim or statement to the agency.

DATES: Comments must be submitted on or before June 22, 1987.

ADDRESS: Comments may be mailed to the General Counsel, Room 700, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Patricia R. Forbes, Attorney Adviser, (202)653–6573.

SUPPLEMENTARY INFORMATION: The structure of a PFCRA procedure under this regulation may be described as follows. The PFCRA authorizes investigations of false claims and statements by the Small Business Administration's (SBA) Inspector General (investigating official). Cases are initially referred to SBA's General Counsel (reviewing official) for evaluation and approval, then to the Attorney General for Department of Justice approval. The Department of Justice could elect to bring the case itself in court under the False Claims Act which would preclude SBA's further action on the matter. If the Department of Justice approves the use of PFCRA procedures, the case may be referred to an ALJ for a formal hearing on the record. The PFCRA provides for an appeal of the ALJ's decision to SBA's Administrator and then to the U.S. District Court.

Although many regulatory provisions came directly from the statute, the Task Force or SBA has interpreted the statute in areas where the statute was silent. These areas are discussed below.

Section 142.2 Definitions

Most of the definitions come directly from the statute.

The definition of "benefits" in the regulations is a very broad one for the purposes of describing the scope of the benefits in the context of false statements. Of particular interest to the Small Business Administration is the inclusion of loan guarantees in the definition of benefits. This broad definition of benefits should be distinguished from the limitations on coverage of the statute with respect to beneficiaries of specific benefit programs.

The definition of "person" incorporates the following additional entities: Sole proprietorship, state, political subdivision of a state, municipality, county, district, and Indian tribe. This broad definition of "person" in these regulations reflects the Agency's belief that Congress intended the PFCRA to be an administrative substitute for a civil action under the False Claims Act and should be available against the same persons that are subject to that statute.

The definition of "representative" allows only attorneys to serve as representatives. This is consistent with SBA practice in similar areas.

Section 142.3 Basis for civil penalties and assessments

This section largely comes directly from the statute or the legislative history. Liability for assessments, which are in lieu of damages, is joint and several, but liability for civil penalties may be imposed on each defendant separately up to the maximum.

Section 142.4 Investigations

The regulations provide that an investigating official must submit a report to the reviewing official only where he concludes that an action under PFCRA may be warranted. It was determined that any other reading of the statute could result in a significant waste of resources and time.

The regulation prescribes basic procedures for an investigating official to issue subpoenas under the new documentary subpoena authority granted by the statute. However, nothing prevents investigating officials from exercising the subpoena powers that they already have under the Inspector General Act of 1978. Likewise, the regulation underscores the investigating official's continuing discretion to refer matters to the Department of Justice for other civil action and to regulate the timing of referrals under PFCRA to the reviewing official, as well as his continuing obligation to refer criminal violations directly to prosecuting officials.

Section 142.5 Review by the reviewing official

This section comes largely from the statute, section 3803(a)(2). The statute, at section 3809, requires the reviewing official to determine that there is a reasonable prospect of collecting the amount of penalties and assessments for which a person may be liable. The regulations provide that, although the complaint to the defendant will not demand a specific amount of penalties and assessments (see § 142.7), the reviewing official is under no obligation to determine that a defendant can pay the statutory maximum, but only that an "appropriate amount" is collectible.

Section 142.6 Prerequisites for issuing a complaint

Most of this section derives directly from the statute. Beyond the discretion of the reviewing official and the Attorney General, the statute limits the types of cases that can be brought under its provisions. Also, any claim or "related group of claims submitted at the same time" for money, property or services in excess of $150,000 is beyond this statute's reach. The regulation

reflects a narrow interpretation of this restriction to prevent unwarranted attempts to avoid liability under PFCRA.

Section 142.7 Complaint

The complaint formally notifies the defendant of the allegations against him. It does not set out a specific amount of penalties and assessments, but states only the statutory maximum liability under the statute. This is the current practice at the Department of Justice with respect to False Claims Act suits.

Section 142.9 Answer

Any answer to the complaint will be deemed a request for hearing. This will allow the complaint and answer to be forwarded to the ALJ for the prompt issuance of a notice of hearing, the event that formally commences a proceeding under the statute. Sections 3803(d)(2), 3808(a).

Section 142.10 Default upon failure to answer

These regulations provide that a defendant's failure to file a timely answer, in the absence of extraordinary circumstances, will result in imposition of the statutory maximum penalties and assessments. The case is referred to the ALJ for a decision that can become final agency action and thus enforceable, but the ALJ's discretion is limited to a determination of whether the facts stated in the complaint would, if true, establish liability. There is no discretion on the amount of penalties and assessments to be imposed.

This procedure was adopted to discourage defaults and to obviate the need for the government to try its case without the defendant. The defendant has the opportunity to show to the ALJ, the SBA Administrator, and a district court any extraordinary circumstances excusing his failure to file an answer.

Section 142.12 Notice of Hearing

It is generally the issuance of the notice of hearing that commences the PFCRA proceeding for the purposes of the statute of limitations. See § 142.47 below. Most of the requirements for the contents of the notice are statutory.

Section 142.13 Parties to the hearing

The only parties to the hearing are the defendants and SBA. There is no Provision for intervention or joinder. The recent amendments to the False Claims Act provide that a *qui tam* plaintiff in a proceeding under that Act may participate in PFCRA proceedings.

Section 142.14 Separation of functions

Subsections (a) and (b) are required by statute, section 3803(g)(2)(D). Subsection (c) reflects that the representative for SBA may be employed anywhere in the agency. This would permit an attorney for the Inspector General to participate in the representation of the agency in certain cases.

Section 142.15 Ex parte contacts

The prohibition against ex parte contacts derives for the most part from the Administrative Procedure Act, 5 U.S.C. 557(d). There is an express limited exception for inquiries relating to the status of a case or procedures.

Section 142.16 Disqualification of reviewing official or ALJ

The statute requires that participating agencies provide in regulations for the disqualification of a reviewing official or an ALJ. Section 3803(g)(2)(G). If a reviewing official is determined by the ALJ to be disqualified, the complaint will be dismissed, but the case could be reconsidered by another reviewing official. There is no interlocutory appeal of a denial of a motion for disqualification.

Section 142.19 Prehearing conference

The ALJ may order a prehearing conference but shall order one on the request of either party. Experience has shown that such prehearing conferences are extremely valuable in expediting and simplifying the issues at an evidentiary hearing. At the prehearing conference, the defendant may waive the oral hearing and elect to proceed on the written record alone. The prehearing conferences may be held over the telephone at the ALJ's discretion. If neither party nor the ALJ wishes a prehearing conference, then none need be held.

Section 142.20 Disclosure of documents

The statute requires the disclosures of certain types of documents to defendants. Section 3803(c) (1)(A), (2). Such mandatory disclosure has been limited to the extent consistent with the statute and legislative history. Although the defendant has the right to access to the types of documents described in the statute and regulations at any time after service of the complaint, until defendant files an answer and the case is referred to an ALJ, there is no impartial person to decide any disputes over access. Therefore, the regulations provide that the resolution of any disputes over access to particular documents must await such referral to the ALJ. This should not prejudice the defendant, since the case is referred to the ALJ upon the filing of an answer.

Section 142.21 Discovery

The statute provides only for such discovery as the ALJ determines is necessary for the expeditious, fair and reasonable consideration of the issues. The legislative history, S. Rep. No. 99–212, *supra*, at 15, indicates that:

> In the ordinary case, the committee anticipates that the timely exchange of proposed exhibits, witness lists and witness statements will constitute sufficient discovery. It is clearly the committee's hope that this alternative administrative mechanism will not become entangled in the unchecked, 'discovery wars' that render many court cases excessively costly and time-consuming.

In order to ensure that discovery is controlled, and to prevent abuse, all discovery must be approved by the ALJ, absent agreement of the Parties. The burden of proof is on the proponent of discovery and the ALJ may order discovery only upon making the findings specified in the regulations. The ALJ may also allow discovery subject to protective orders (§ 142.42).

Section 142.22 Exchange of witness lists, statements, and exhibits

The regulations provide for the exchange of certain documents before the hearing, including witness lists, copies of prior statements of witnesses and copies of hearing exhibits. The ALJ may exclude witnesses and documents of which the other parties have not received such notice, and documents so exchanged will be deemed authentic for the purposes of admissibility at the hearing un1ess a party objects in advance.

Section 142.23 Subpoenas for attendance at the hearing

Subpoenas are not issued ex parte, and parties as well as subpoenaed witnesses may move to quash.

Section 124.25 Fees

Although there is no express statutory authorization for paying witness fees, it is implicit within the ALJ's subpoena authority. To ensure uniformity among the agencies, the model regulation provided for witnesses to be paid at the same rate as is applicable to proceedings in the United States district courts. SBA adopted the model regulation verbatim.

Section 142.28 Motions

All requests to an ALJ are to be by motion. Other parties are given 15 days to respond. The ALJ may deny (but may not grant) a motion prior to the time for response.

Section 142.29 Sanctions

The regulations expressly recognize an ALJ's authority to impose sanctions upon Parties and their representatives for violating regulations or orders. These sanction provisions are modeled on those of the Merit Systems Protection Board, 5 CFR 1201.43.

Section 142.30 The hearing and burden of proof

This provision recognizes that SBA has the burden of proof on the issues of liability and the existence of factors in aggravation, and that the defendant has the burden of proof on affirmative defenses and mitigating factors.

Section 142.30 Determining the amount of penalties and assessments

The statute authorizes the imposition of penalties of up to $5,000 per claim and assessments of up to twice the amount of the claim or the portion thereof that violates the Act. Unlike the False Claims Act that provides a fixed penalty and treble damages for each false claim, PFCRA requires an ALJ to exercise discretion in setting the amount of penalties and assessments for each violation at or below a statutory maximum. However, the statute is silent on how this amount should be determined. The regulations contain a non-exclusive list of factors that the ALJ and the Administrator should consider in exercising their discretion to determine the amount. Some of these factors may serve to aggravate the violation; other may serve to mitigate it.

The value in considering aggravating and mitigating factors in fixing the amount of penalties and assessments is that it helps to rationalize the exercise of discretion, and will help to justify the decision on judicial review. *See, e.g., Mayers* v. *United States Department of Health and Human Services*, No. 85–3803 (11th Cir., Dec. 22, 1986) (affirming a civil penalty and assessment of $1.79 million under 42 U.S.C. 1320a–7a (Civil Monetary Penalties Law for Medicare and Medicaid false claims). In this case, the court discussed with approval the aggravating circumstances in the case that supported the large penalty.

The list of factors is not exclusive. The ALJ and Administrator remain free to consider factors that may aggravate or mitigate the amount of penalties and assessments as they are presented in particular cases.

Section 142.32 Location of hearing

Section 3803(g)(4) of the statute provides that the *defendant* and the *ALJ* may agree on the place for the hearing. However, the regulations give the agency an opportunity to present argument on the issue.

Section 142.33 Witnesses

At the discretion of the ALJ, testimony can be in the form of a written statement or deposition so long as opposing parties have sufficient opportunity to subpoena the person whose statement is being offered.

Cross-examination may, at the discretion of the ALJ, exceed the scope of direct examination. The provisions in § 142.33 (c) and (e) are derived from Rule 611 of the Federal Rules of Evidence.

Section 142.34 Evidence

Sections 142.34(a)–(d) were included to be largely consistent with the recommendation of the Administrative Conference of the United States, in Recommendation 86–2, 1 CFR 305.86–2, 51 FR 25641 (July 16, 1986). The Federal Rules of Evidence are not, with some exceptions, binding on the ALJ, who has the authority to determine the admissibility of evidence.

Section 142.35 The record

The record will generally be open to the public. The availability of the transcript is governed by the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 11, which requires the provision of transcripts to the parties and public at the cost of duplication.

Section 142.36 Post-hearing briefs

The ALJ may fix the time for filing post-hearing briefs, not to exceed 60 days from the date the parties receive the transcript or the stipulated record. In the experience of the Task Force, most cases involving fraud are factually complicated and post-hearing briefs will be helpful to the presentation of the case.

Section 142.37 Initial decision

A hortatory time limit for the ALJ's issuance of an initial decision has been included. The limit is 90 days from the close of the hearing or the time for submission of post-hearing briefs.

Section 142.38 Reconsideration of initial decision

The statute authorizes appeal of the ALJ decision to the Administrator only by the defendant. A provision for a motion to the ALJ for reconsideration of the initial decision has been included in the regulations to give the authority an opportunity to seek correction of errors in that decision.

Section 142.39 Appeal to authority head

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

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under section 38 has expired.

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

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

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

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

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

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

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

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

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

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

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

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

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Administrator serves the defendant with a copy of the Administrator's decision, a determination that a defendant is liable under section 3 is final and is not subject to judicial review.

Section 142.40 Stays ordered by the Department of Justice

This provision comes directly from the statute. Section 3803(b)(3).

Section 142.41 Stay pending appeal

This provision makes clear that the ALJ's opinion is stayed pending appeal to the Administrator, but that any further stay of the effectiveness of an agency decision must be sought from the courts.

Section 142.46 Compromise or settlement

This section has collected in one place the various provisions in the statute to compromise and settle cases under PFCRA.

Section 142.47 Limitations

It should be noted that the proceeding under PFCRA commences for statute of limitations purposes not when the complaint is served, but when the ALJ serves a notice of hearing (§ 142.12). In the event that the defendant fails to file an answer, the regulations provide that a notice under § 142.10(b) shall be deemed a notice of hearing for statute of limitations purposes. This provision was included because where no answer and request for hearing are filed, no notice of hearing would be issued. Congress could not have intended a defendant to escape liability under the statute simply by ignoring the complaint.

Compliance With the Administrative Procedure Act (5 U.S.C. 551. et seq., Regulatory Flexibility Act 5 U.S.C. 601, et seq.), Executive Order 12291, and the Paperwork Reduction Act (44 U.S.C. Ch. 35).

This regulation is procedural in nature and as such, the Administrative Procedure Act does not require it to be published for public comment prior to its promulgation as a final regulation. 5 U.S.C. 553(b)(3)(A). Therefore, in order to comply with the statutory deadline of April 21, 1987, SBA is publishing this regulation in interim final form with a 30 day public comment period following the effective date of the interim final rule.

SBA certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Although the procedures enable certain penalties to be assessed where false or fictitious statements have been made to SBA, SBA does not anticipate that a substantial number of small businesses will be affected by these procedures.

In addition, SBA finds that this regulation is not a major rule under Executive Order 12291, as the procedures it establishes are not expected to result in an annual effect on the economy of $100 million or more. Since the PFCRA does not expand the investigative jurisdiction of the SBA, the economic effect of these procedural regulations is not expected to approach the $100 million level.

These procedural regulations do not require any additional reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act.

List of Subjects in 13 CFR Part 142

Administrative practice and procedure, Investigations, Small businesses.

Accordingly, pursuant to section 3803(g)(2) of the Program Fraud Civil Remedies Act, 31 U.S.C. Ch. 38, the Administrator is amending Chapter I of Title 13 CFR by adding a new Part 142.

PART 142—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

Sec.

142.1 Basis and purpose.
142.2 Definitions.
142.3 Basis for civil penalties and assessments.
142.4 Investigation.
142.5 Review by reviewing official.
142.6 Prerequisites for issuing a complaint.
142.7 Complaint.
142.8 Service of complaint.
142.9 Answer.
142.10 Default upon failure to file an answer.
142.11 Referral of complaint and answer to the ALJ.
142.12 Notice of hearing.
142.13 Parties to the hearing.
142.14 Separation of functions.
142.15 Ex parte contacts.
142.16 Disqualification of reviewing official or ALJ.
142.17 Rights of parties.
142.18 Authority of the ALJ.
142.19 Prehearing conferences.
142.20 Disclosure of documents.
142.21 Discovery.
142.22 Exchange of witness lists, statements, and exhibits.
142.23 Subpoenas for attendance at hearing.
142.24 Protective order.
142.25 Fees.
142.26 Form, filing and service of papers.
142.27 Computation of time.
142.28 Motions.
142.29 Sanctions.
142.30 The hearing and burden of proof.
142.31 Determining the amount of penalties and assessments.
142.32 Location of hearing.
142.33 Witnesses.
142.34 Evidence.
142.35 The record.
142.36 Post-hearing briefs.
142.37 Initial decision.
142.38 Reconsideration of initial decision.
142.39 Appeal to the Administrator.
142.40 Stays ordered by the Department of Justice.
142.41 Stay pending appeal.
142.42 Judicial review.
142.43 Collection of civil penalties and assessments.
142.44 Right to administrative offset.
142.45 Deposit in Treasury of United States.
142.46 Compromise or settlement.
142.47 Limitations.

Authority: 31 U.S.C. 3803(g)(2), 15 U.S.C. 634(b)(6).

§ 142.1 Basis and purpose.

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

(b) *Purpose.* This part: (1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 142.2 Definitions.

Administration means the Small Business Administration.

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

Authority means the Small Business Administration.

Authority head means the Administrator of the Small Business Administration.

Benefits means, except as the context otherwise requires, anything of value,

including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

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

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

(i) Provided such property or services;

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

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

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

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

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

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

Complaint means the administrative complaint served by the reviewing official on the defendant under § 142.7.

Defendant means any person alleged in a complaint under § 142.7 to be liable for a civil penalty or assessment under § 142.3.

Government means the United States Government.

Individual means a natural person.

Initial decision means the written decision of the ALJ required by § 142.10 or § 142.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the Small Business Administration or an officer or employee of the Office of Inspector General as designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

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

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

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

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

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

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

Presiding officer means an administrative law judge appointed pursuant to section 3105 of Title 5, United States Code and serving in the Office of Hearings and Appeals of the Small Business Administration or detailed to such office pursuant to section 3344 of Title 5, United States Code.

Representative means an attorney.

Reviewing official means the General Counsel of the Administration or his designee who is—

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

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

SBA means the Small Business Administration.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

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

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

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

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

§ 142.3 Basis for civil penalties and assessments.

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

(i) Is false, fictitious, or fraudulent;

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

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

(A) Omits a material fact;

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

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

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any remedy that may be prescribed by law, to a civil penalty or not more than $5,000 for each such claim.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 142.4. Investigation.

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

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

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

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

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

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

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

§ 142.5. Review by the reviewing official.

(a) If, based on the report of the investigating official under § 142.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 142.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 142.7.

(b) Such notice shall include—

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

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

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

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 142.3 of this part;

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

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

§ 142.6. Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 142.7 only if—

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

(2) In the case of allegations of liability under § 142.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 142.3(a) does not exceed $150,000.

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

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

§ 142.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 142.8.

(b) The complaint shall state—

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

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

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

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

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

§ 142.8 Service of complaint.

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

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

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment of the defendant or his representative.

§ 142.9 Answer.

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

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

§ 142.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 142.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 142.8, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to answer, the ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 142.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

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

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

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

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 142.38.

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

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

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

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

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

§ 142.11 Referral of complaint and answer to the ALJ.

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

§ 142.12 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed in § 142.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

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

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 142.13 Parties to the hearing.

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

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

§ 142.14 Separation of functions.

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

(1) Participate in the hearing as the ALJ;

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

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

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

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

§ 142.15 Ex parte contacts.

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

§ 142.16 Disqualification of reviewing official or ALJ.

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

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

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

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by

a certificate of the representative of record that it is made in good faith.

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

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

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

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

§ 142.17 Rights of parties.

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

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

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

(c) Conduct discovery;

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

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

(f) Present and cross-examine witnesses;

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

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

§ 142.18 Authority of the ALJ.

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

(b) The ALJ has the authority to—

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

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

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

(4) Administer oaths and affirmations;

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

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

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

(9) Examine witnesses;

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

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

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

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

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

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

§ 142.19 Prehearing conferences.

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

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

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

(1) Simplification of the issues;

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

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

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

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

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness1 lists and of proposed exhibits;

(8) Discovery;

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

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

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

§ 142.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 142.4(b) are based unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

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

(c) The notice sent to the Attorney General from the reviewing official as described in § 142.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such motion may only be filed with the ALJ following the filing of an answer pursuant to § 142.9.

§ 142.21 Discovery.

(a) The following types of discovery are authorized:

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

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

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 142.22 and 142.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

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

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

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 142.24.

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

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

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

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

(5) The ALJ may grant discovery subject to a protective order under § 142.24.

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

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 142.8.

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

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

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

§ 142.22 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 142.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

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

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 142.23 Subpoenas for attendance at hearing.

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

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

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

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

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 142.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

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

§ 142.24 Protective order.

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

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

(1) That the discovery not be had;

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

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

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

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

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

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

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

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

§ 142.25 Fees.

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

§ 142.26 Form, filing and service of papers.

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

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

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

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

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

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting

forth the manner of service, shall be proof of service.

§ 142.27 Computation of time.

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

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

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

§ 142.28 Motions.

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

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

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

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

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

§ 142.29 Sanctions.

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

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

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

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

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

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

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

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

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

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

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

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

§ 142.30 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 142.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

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

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

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

§ 142.31 Determining the amount of penalties and assessments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 142.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in the claim or statement in issue was made; or

(3) In such other Place as may be agreed upon by the defendant and the ALJ.

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

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

§ 142.33 Witnesses.

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

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 142.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

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

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

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

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 142.34 Evidence.

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

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

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

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

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

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

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

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 142.24.

§ 142.35 The record.

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

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

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 142.24.

§ 142.36 Post-hearing briefs.

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

§ 142.37 Initial decision.

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

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

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 142.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 142.31.

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

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

§ 142.38 Reconsideration of initial decision.

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

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

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

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

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

(f) When a motion for reconsideration is made, the time periods for appeal to the Administrator contained in § 142.38, and for finality of the initial decision in § 142.36(d), shall begin on the date the ALJ issues the denial of the motion for reconsideration or a revised initial decision, as appropriate.

§ 142.39 Appeal to the Administrator.

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

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 142.38 has expired.

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

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

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

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

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

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

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

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

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

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

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

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

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Administrator serves the defendant with a copy of the Administrator's decision, a determination that a defendant is liable under § 142.3 is final and is not subject to judicial review.

§ 142.40 Stays ordered by the Department of Justice.

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

§ 142.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Administrator.

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

§ 142.42 Judicial review.

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

§ 142.43 Collection of civil penalties and assessments.

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

§ 142.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 142.42 or § 142.43, or any amount agreed upon in a compromise or settlement under § 142.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 142.45 Deposit in Treasury of United States.

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

§ 142.46 Compromise or settlement.

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

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

(c) The Administrator has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 142.42 or during the pendency of any action to collect penalties and assessments under § 142.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 142.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

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

settlement terms to the Administrator, or the Attorney General, as appropriate.

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

§ 142.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 142.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 142.10(b) shall be deemed a notice of hearing for purposes of this section.

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

Dated: April 14, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-11531 Filed 5-20-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 39

[Docket No. 87-NM-46-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes Modified With Heath Tecna "SuperBins" in Accordance With STC SA2365NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes equipped with Heath Tecna "SuperBins," which would require chafe protection for wire bundles located between ceiling panels and Heath Tecna "SuperBin" overhead bins. This proposal is prompted by reports of chafing and/or burning of these wire bundles, caused by contact between the outboard edges of the ceiling panels and the bin back panels. This condition, if not corrected, could result in fires.

DATE: Comments must be received no later than July 13, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-46-Ad, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Heath Tecna Aerospace Company, 19819 84th Avenue South, Kent, Washington 98032. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Rees, Aerospace Engineer, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1941. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public docket concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-46-AD, 17900 Pacific Highway South, C-68966, Seattle Washington 98168.

DISCUSSION: An operator of Boeing Model 747 airplanes has reported two cases of chafing and/or burning of the ceiling light wire bundles that rest atop the Heath Tecna "SuperBins" installed in accordance with Supplemental Type Certificate SA2365NM. The chafing is caused by the close proximity or contact between the outboard edges of the ceiling panels and the "SuperBin" back panels. This condition can result from an incorrect installation, or from a subsequent and undetected loosening of a ceiling panel. Chafing of these wire bundles will eventually result in arcing and burning of the bundle, with the potential of involving adjacent insulation material. Smoke and/or fire that emanates from this portion of an airplane, above the ceiling panels, would probably not be detected until combustion was well-developed, and it would then be extremely difficult to isolate and extinguish.

The FAA has reviewed and approved Heath Tecna Service Bulletin 74000-25-007, dated March 6, 1987, which describes the installation of spacer blocks atop the bins to prevent the ceiling panels from contacting the wire bundles. The service bulletin also lists the affected Boeing Model 747 airplanes.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the wire bundle protection modification in accordance with the service bulletin previously mentioned.

It is estimated that 57 airplanes of U.S. registry would be affected by this AD, that it would take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The average cost of materials per airplane is estimated to be $84. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $20,748.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not a major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

2. By adding the following new airworthiness directive:

HEATH TECNA: Applies to Boeing Model 747 airplanes, certificated in any category, that have been modified in accordance with Supplemental Type Certificate SA2365NM, listed in Heath Tecna Service Bulletin 74000-25-007, dated March 6, 1987. Compliance required as indicated, unless previously accomplished.

To minimize fire hazard caused by chafing of ceiling light wire bundles, accomplish the following:

A. Within 60 days after the effective date of this AD, inspect the ceiling light wire bundles that rest atop the Heath Tecna "SuperBins" for evidence of damage or chafing, and repair, if necessary, before further flight; and accomplish either 1. or 2., below:

1. Install spacers to protect lighting wire bundles from chafing in accordance with Heath Tecna Service Bulletin 74000-25-007, dated March 6, 1987, or later FAA-approved revision; or

2. Trim the outboard edges of the ceiling panels in accordance with paragraph 2C of Heath Tecna Service Bulletin 74000-25-007, dated March 6, 1987, or later FAA-approved revision.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Heath Tecna Aerospace Company, 19819 84th Avenue South, Kent, Washington 98032. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington 98108.

Issued in Seattle, Washington, on May 14, 1987.

Frederick, M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-11565 Filed 5-20-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404, 410, and 416

Federal Old-Age, Survivors, and Disability Insurance; Supplemental Security Income for the Aged, Blind, and Disabled; Federal Mine Safety and Health Act of 1977; Own-Motion Review of Fee Determinations

AGENCY: Social Security Administration, HHS.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: We are withdrawing the proposed amendment to the regulations entitled "Own-Motion Review of Fee Determinations" which was published in the **Federal Register** of August 12, 1986 (51 FR 28834).

DATE: The withdrawal is effective May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-6629.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on August 12, 1986 proposed revising the regulations on review of fee determinations to allow the Social Security Administration (SSA) on its own motion to review and revise fee determinations which are based on improper application of the statute or regulations, or on an error of fact. The current regulations provide that either the claimant or representative may request administrative review of a fee determination. The current regulations do not provide SSA the authority to correct errors that are inequitable to either a claimant or representative unless the claimant or representative requests administrative review.

We have reviewed the comments received in response to the NPRM. Generally, the comments were negative towards the proposed regulation change. Moreover, a review of these comments indicates that there was a basic minunderstanding of what SSA intended to achieve. In view of these developments, we have determined that continued rulemaking action on the proposed NPRM entitled "Own-Motion Review of Fee Determinations" is not now appropriate and that the NPRM should be withdrawn.

The withdrawal of this proposal, however, does not preclude us from considering similar notices in the future or commit us to any specific future course of action.

Accordingly the NPRM published in the **Federal Register** at 51 FR 28834 on August 12, 1986, entitled "Own-Motion Review of Fee Determinations," is hereby withdrawn.

Dated: April 3, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: May 1, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 87-11678 Filed 5-20-87; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 146

[Docket No. 86P-0338]

Pineapple Juice; Proposal To Amend U.S. Standards of Identity and Quality

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the U.S. standard of identity for pineapple juice to permit the addition of concentrated pineapple juice in an amount not to exceed 15 percent of the total pineapple juice soluble solids to improve the flavor and palatability of pineapple juice and to amend the U.S. standard of quality to provide for nutritive carbohydrate sweeteners for consistency with the U.S. standard of identity. This action responds to a petition filed by the Pineapple Growers Association of Hawaii and would promote honesty and fair dealing in the interest of consumers.

DATE: Comments by July 20, 1987.

The agency proposes that any final rule that may be issued based on this proposal become effective 60 days after date of publication of the final rule in the **Federal Register.**

ADDRESS: Written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0118.

SUPPLEMENTARY INFORMATION: The Pineapple Growers Association of Hawaii (PGAH), 1150 South King St., Honolulu, HI 96814, has submitted a petition requesting that FDA amend the U.S. standard of identity for pineapple juice (21 CFR 146.185(a)) to permit the use in "pineapple juice" of concentrated pineapple juice in an amount not to exceed 15 percent of the total pineapple juice soluble solids in the finished food.

The U.S. standard of identity for pineapple juice states in § 146.185(a)(2) that the name of the food is "Pineapple juice" if the juice from which it is prepared has not been concentrated and/or diluted with water. The standard further states that the name of the food is "Pineapple juice from concentrate" if the finished juice has been concentrated and later reconstituted with water suitable for the purpose of maintaining essential composition and quality factors of the juice.

PGAH asserts that there is considerable variation in the Brix and acidity of single-strength pineapple juice. PGAH further points out that occasionally the fresh juice obtained from the pineapple fails to comply with the minimum soluble solids requirement of 10.5 ° Brix and the maximum acidity requirement of 1.35 grams of anhydrous citric acid per 100 milliliters of juice in the U.S. standard of quality for pineapple juice (§ 146.185(b)(1)). PGAH contends that permitting the addition of concentrated pineapple juice to pineapple juice with a low soluble solids content will bring the juice into compliance with the current minimum Brix requirement and improve the flavor. PGAH also contends that the addition of low acid concentrated pineapple juice to pineapple juice with a high acidity will bring it into compliance with the acidity requirement and make the juice more palatable.

PGAH further requests that the reference to sugars in § 146.185(b)(1) of the U.S. standard of quality for pineapple juice be changed to sweeteners.

FDA believes that there is merit to PGAH's contentions and that it would promote honesty and fair dealing in the interest of consumers to amend the existing standard to provide for the addition of concentrated pineapple juice in an amount not to exceed 15 percent of the total pineapple juice soluble solids in the finished food. FDA also believes that the reference to sugars in § 146.185(b)(1) should be changed to nutritive carbohydrate sweeteners, consistent with the provision for nutritive carbohydrate sweetener as an optional ingredient of pineapple juice in § 146.185(a)(1).

FDA also believes that this is an opportune time to make minor editorial changes in the format of the U.S. standard of identity for pineapple juice for consistency with other recently revised U.S. standards of identity.

FDA, therefore, Proposes to amend the U.S. standards of identity and quality for pineapple juice in § 146.185 by (1) permitting the adjustment of the pineapple juice soluble solids content by the addition of concentrated pineapple juice in such quantity that the added concentrate does not contribute more than 15 percent of the total pineapple juice soluble solids in the finished food, (2) providing for concentrated pineapple juice (pineapple juice from which part of the water has been removed) as an optional ingredient in pineapple juice, and (3) replacing the word "sugars" with "nutritive carbohydrate sweeteners," as appropriate.

Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601), FDA has reviewed this proposal to determine its impact on small businesses. The proposal permits the use of concentrated pineapple juice for the improvement in flavor and palatability of pineapple juice low in soluble solids or high in acidity. The agency believes that this proposal provides increased flexibility to producers of pineapple juice and will not impose an additional burden on the industry. Therefore, FDA certifies that this proposed action will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

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

Comments

Interested persons may, on or before July 20, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 146

Fruit juices, Food standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that Part 146 be amended as follows:

PART 146—CANNED FRUIT JUICES

1. The authority citation for 21 CFR Part 146 is revised to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)); 21 CFR 5.10 and 5.61.

2. Section 146.185(a) is revised to read as follows:

§ 146.185 Pineapple juice.

(a) *Identity*—(1) *Description.* Pineapple juice is the juice, intended for direct consumption, obtained by mechanical process from the flesh or parts thereof, with or without core material, of sound, ripe pineapple (*Ananas comosus* L. Merrill). The juice may be adjusted by the addition of the optional concentrated pineapple juice ingredient, specified in paragraph (a)(2) of this section, in such quantity that the added concentrate does not contribute more than 15 percent of the total pineapple juice soluble solids in the finished food. The juice may have been concentrated and later reconstituted with water suitable for the purpose of maintaining essential composition and quality factors of the juice. Pineapple juice may contain finely divided insoluble solids, but it does not contain pieces of shell, seeds, or other coarse or hard substances or excess pulp. The food may contain one or any combination of the safe and suitable optional ingredients specified in paragraph (a)(2) of this section. Pineapple juice, as defined in this paragraph, may be preserved by heat sterilization (canning), refrigeration, or freezing. When sealed in a container to be held at ambient temperatures, it is so processed by heat, before or after sealing, as to prevent spoilage.

(2) *Optional ingredients.* The optional safe and suitable ingredients referred to in paragraph (a)(1) of this section are:

(i) Concentrated pineapple juice (pineapple juice from which part of the water has been removed).

(ii) Water.

(iii) Dry nutritive carbohyrate sweeteners except that if the pineapple juice is prepared from concentrate, such sweeteners in liquid form may be used.

(iv) Vitamin C in a quantity such that the total vitamin C content in each 4

fluid ounces of the finished food amounts to not less than 30 milligrams and not more than 60 milligrams.

(v) Dimethylpolysiloxane in an amount not greater than 10 parts per million by weight of the finished food as a defoaming agent.

(3) *Labeling.* (i) The name of the food is:

(*a*) "Pineapple juice" if (*1*) the juice from which it is prepared has not been concentrated and/or diluted with water; or (*2*) the juice is prepared from unconcentrated, undiluted liquid extracted from sound, ripe pineapples to which concentrated pineapple juice is added to adjust the soluble solids as provided for in paragraph (a)(1) of this section.

(*b*) "Pineapple juice from concentrate" if the finished juice is prepared with more than 15 percent pineapple juice soluble solids from pineapple juice concentrate.

(ii) The statement "Sweetener added" shall be included as part of the name or in close proximity to the name of the food if a nutritive carbohydrate sweetener is added. The word "Unsweetened" may immediately precede or follow the words "Pineapple juice" or "Pineapple juice from concentrate," if no nutritive carbohydrate sweetener is added.

(iii) Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

* * * * *

§ 146.185 [Amended]

3. Section 146.185(b)(1) is amended by replacing the word "sugars" with "nutritive carbohydrate sweeteners" wherever it occurs.

Dated: May 11, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-11599 Filed 5-20-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Montana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for a public hearing on the substantive adequacy of amendments submitted by the State of Montana to amend its permanent regulatory program (hereinafter referred to as the Montana Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Montana regulatory program concerning remining, coal processing, reclamation fee records, and permit application fees.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

DATES: Comments not received on or before 4:00 p.m., June 22, 1987, will not necessarily be considered

If requested, a public hearing on the proposed modifications will be held on June 15, 1987, beginning at 10:00 a.m. at the location shown below under **"ADDRESSES".**

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601-1918.

If a public hearing is held, its location will be at: The Montana Capitol Building, Helena, Montana 59601.

See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the Montana program amendment and administrative record on the Montana program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSMRE Casper Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601-1918; Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the Montana program amendment, the Montana program and the administrative record on the Montana program are available for public review and copying at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601-1918; Telephone: (307) 261-5776

Office of Surface Mining Reclamation and Enforcement, 1100 L Street, NW., Room 5131, Washington, DC 20240; Telephone: (202) 343-5447

Montana Department of State Lands, Reclamation Division, Capitol Station, 1625 Eleventh Avenue, Helena, Montana 59620; Telephone: (406) 444-2074.

Written Comments

Written comments should be specific, pertain only to those issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than Casper, Wyoming, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business June 5, 1987. If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the result of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will also allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed in "Addresses" by contacting the person listed under "For Further Information Contact".

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

Background

On August 3, 1979, the Secretary of the Interior received a proposed regulatory program from the State of Montana. On April 1, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary conditionally approved the Montana program (45 FR 21560).

Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the condition of approval of the Montana program, can be found in the April 1, 1980 **Federal Register**. Subsequent actions concerning the Montana program are identified in 30 CFR 926.15.

Proposed Amendment

On April 23, 1987, the State of Montana submitted to OSMRE amendments to its approved permanent regulatory program. The amendments consist of proposed modifications to Montana statute concerning remining, coal processing, reclamation fee records, and permit application fees.

The proposed changes are summarized briefly below.

1. Section 82–4–203 MCA, Definitions. As they apply, definitions are provided for coal preparation, coal preparation plant, operation, operator, remining and strip mining.

2. Section 82–4–222 MCA, Permit Application. Language added stating applicants must supply information on whether the applicant has a record of outstanding reclamation fees with federal coal regulatory authority.

3. Section 82–4–223 MCA, Permit Fee and Surety Bond. The application fee necessary before the permit required in this part is issued was raised from $50.00 to $100.00 and new subsection 4—Extension of Authority is added to this part.

Therefore, the Director, OSMRE is seeking public comment on the adquacy of the proposed program amendments. Comments should specifically address whether the proposed amendments are as stringent as SMCRA and no less effective than its implementing regulations.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 926

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 8, 1987.

Raymond L. Lowrie,

Assistant Director, Western Field Operations, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87–11661 Filed 5–20–87; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–87–12]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Georgia

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Chatham County, the Coast Guard is considering a change to the regulations governing the Causton Bluff drawbridge at Causton Bluff, Georgia, by extending the hours during which bridge openings are limited. This proposal is being made because of complaints about highway traffic delays during morning and evening peak-travel periods. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before July 6, 1987.

ADDRESS: Comments should be mailed to Commander (oan), Seventh Coast Guard Distrct, 51 SW. 1st Avenue, Miami, Florida 33130–1608. The comments and other materials referenced in this notice will be availiable for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Lee, Chief, Bridge Section, Seventh Coast Guard District, telephone (305) 536–4103.

SPPPLEMENTARY INFORMATION: Interested persons are invited to particpate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

Opening of the Causton Bluff bridge presently is restricted from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except federal holidays. The county has submitted vehicular traffic counts which show an increase in the duration of peak travel periods. We propose to extend the periods of restricted openings by one hour during the morning "rush-hour" and by 30 minutes in the evening, with scheduled openings at 8 a.m. and 5:30 p.m. to allow accumulated vessels to pass. The changes should reduce highway traffic congestion with minimal additional delay to vessels.

Economic Assessment and Certification

These proposed 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 this proposal 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 this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

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 117.353(b) is revised to read as follows:

§ 117.353 Atlantic Intracoastal Waterway, Savannah River to St Marys River.

* * * * *

(b) *Causton Bluff (SR26) bridge across the Wilmington River, mile 579.9 near Causton Bluff.* The draw shall open on signal; except that from 6:30 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday, except federal holidays, the draw need open only at 8 a.m. and 5:30 p.m.

* * * * *

Dated May 8, 1987.

M. J. O'Brien,

Captian, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 87–11654 Filed 5–20–87; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD5–87–025]

Drawbridge Operation Regulations; Kent Island Narrows, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Public hearing of proposed regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has authorized a public hearing to be held to receive comments on a proposed regulation governing the operation of the U.S. Route 50/301 bridge across Kent Island Narrows near Grasonville, Maryland. This hearing is being held to gather information and data necessary to attempt to resolve differences between various factions who support or oppose the proposed regulation.

DATE: The hearing will be held at 7:00 p.m. on June 4, 1987.

ADDRESS: Location: The hearing will be at the Stevensville Middle School, Stevensville, Maryland.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, at the Office of Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or telephone (804) 398–6222.

SUPPLEMENTARY INFORMATION: This proposal was published in the **Federal Register** on May 7, 1987, and was distributed as Public Notice 5–627 by the Commander, Fifth Coast Guard District on May 1, 1987. Written comments may be submitted on or before July 6, 1987. They will be available for examination from 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, at the office of the Commander (oan), Room 609, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. Comments may also be hand-delivered to this address.

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement describing the proposed regulation, and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should notify the Contact Officer listed above by June 1, 1987. Such notification should include the approximate time required to make the presentation.

A transcript will be made of the hearing and may be purchased by the public. Interested persons who are unable to attend this hearing may also participate in the consideration of this proposed regulation by submitting their comments in writing. Each comment should state reasons for support or opposition, suggest any proposed changes to the regulation, and include the name and address of the person or organization submitting the comment. All comments received will be considered before final action is taken on the proposed regulation. After the time set for the submission of comments, the Commander, Fifth Coast Guard District will determine a final course of action.

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

Dated: May 12, 1987.

B.F. Hollingsworth

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

[FR Doc. 87–11655 Filed 5–20–87; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 162

[CGD 86–066]

York Spit Channel, Chesapeake Bay; Navigation

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to delete the regulations governing navigation through the York Spit Channel, Chesapeake Bay. This notice is necessary to inform the public and interested parties the navigation regulations governing this waterway are no longer in effect and are deleted from the regulations. The intended effect of this notice is to remove restrictions to navigation through York Spit Channel and update existing federal regulations.

DATE: Comments must be received by July 6, 1987.

ADDRESSES: Comments may be mailed to Commandant (G–CMC/44) (CGD 86–066), U.S. Coast Guard, Washington, DC 20593. Comments may be delivered to and will be available for inspection or copying at the Office of the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, (202) 267–1477, between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Powers, Office of Navigation, Navigation Systems Safety Division, (202) 267–0415.

SUPPLEMENTARY INFORMATION: The regulations governing Inland Waterway Navigation (IWN) of vessels were transferred for administrative and enforcement purposes to the Coast Guard from the U.S. Army Corps of Engineers (COE) by a Memorandum of Understanding signed on May 5, 1977. Discussion between the Coast Guard, pilot associations, local maritime interests, and the COE questioned the purpose, intent, and present usage/usefulness of the York Spit Channel navigation regulation. This regulation was originally developed to restrict the movement of vessels through a hazardous navigation area during a period when vessel traffic was much

greater than traffic levels have been over the past few years. Coast Guard and maritime interests agree the present Inland Navigation Rules provide sufficient guidance to insure navigation safety in the York Spit Channel and surrounding area. Therefore, it is proposed the regulation be deleted from the IWN regulations.

Removal of the York Spit Channel Navigation regulation will inform vessel operators the channel is no longer restricted to entering or departing at the ends of the channel and that administration and enforcement activities associated with this regulation are being terminated. Navigation aids through York Spit Channel will remain in place.

Drafting Information

The principal persons involved in drafting this final rule are Mr. Michael J. Powers, Project Manager, and Lt. Sandra Sylvester, Project Counsel, office of Chief Counsel.

Regulatory Evaluation

This notice is considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; FEb. 26, 1979). The economic impact of this notice has been found to be so minimal that further evaluation is unnecessary. Sufficient guidance to insure navigation safety in the York Spit Channel and surrounding area is provided through the Inland Navigation Rules. It is expected waterborne commerce will continue to use the York Spit Channel for navigation. Since the economic impact is expected to be minimal, the Coast Guard certifies this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 162

Navigation (water), vessels.

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

In consideration of the foregoing, Part 162 of Title 33 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§ 162.45 [Removed]

2. Section 162.45 is removed.

Dated: May 18, 1987.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 87-11656 Filed 5-20-87; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 21

Payments to Dependents of Veterans in Training

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendments.

SUMMARY: It is proposed to amend existing rules governing the payment of monthly benefits to the dependents of veterans in training under the rehabilitation program authorized under Chapter 31. The purpose of these amendments is to provide more detailed instructions regarding the beginning date of payments for veterans' dependents, particularly dependents the veteran accquires after he or she begins training under Chapter 31. The beginning date of payment for dependents the veteran acquires after he or she begins training may not be made earlier than the date the dependent's existence is established. The amendment should eliminate any misinterpretation of this rule.

DATES: Comments must be received on or before June 22, 1987. It is proposed to make this amendment effective the date of final publication.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs, 180 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection in the Veterans Services Unit, Room 132, at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until *July 3, 1987.*

FOR FURTHER INFORMATION CONTACT: Morris Triestman, 202-233-5449.

SUPPLEMENTARY INFORMATION: The rehabilitation program authorized under Chapter 31, Title 38, United States Code, provides training and other benefits and services to veterans who become disabled as a result of service in the Armed Forces. The VA pays the cost of training and other services to service providers, including schools and rehabilitation facilities. During the period of the veteran's training, he or she receives a monthly living allowance to meet regular living expenses. This monthly living allowance includes payment for the veteran and his or her dependents. Benefits for dependents are payable from the date training begins if evidence establishes their existence at the time training begins. In the Case of dependents acquired after the beginning of the rehabilitation program, payment is authorized from the time dependents' existence is established. The proposed amendments add new provisions to assure that the intent of policy is adhered to in authorizing dependency benefits and provides a definition of the term "dependent." the definition of "dependent" is the same as under other education programs administered by the VA.

These proposed amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The proposal will not have $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Administrator certifies that these proposed amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RAF), 5 U.S.C. 601 through 612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of section 603 and 604. The reason for this certification is that the proposed changes only concern the rights and responsibilities of individual VA beneficiaries under Chapter 31. Thus, no regulatory burdens are imposed on small entities by these changes.

The Catalog of Federal Domestic Asssitance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 29, 1987.

Thomas K. Turnage,

Administrator.

PART 21—[AMENDED]

38 CFR Part 21, *Vocational Rehabilitation and Education,* is proposed to be amended as follows:

1. In § 21.260, paragraph (d) is added to read as follows:

§ 21.260 Subsistence allowance.

* * * * *

(d) *Dependents.* The term "dependent" means a spouse, child or dependent parent who meets the definition of relationship specified in §§ 3.50, 3.51, 3.57 or 3.59 of this chapter. (38 U.S.C. 1508(b))

2. In § 21.322, paragrapgh (c) is revised and a new cross-reference is added to read as follows:

§ 21.322 *Commencing dates of subsistence allowance.*

* * * * *

(c) *Increases for dependents*—(1) *Dependency exists at the time of entrance or reentrance into a rehabilitation program.* A veteran may have one or more dependents on or before the date he or she enters or reenters a rehabilitation program. When this occurs, the following rules apply:

(i) The effective date of the increase will be the date of entrance or reentrance if:

(A) The VA receives the claim for the increase within one year of the date of entrance or reentrance; and

(B) The VA receives any necessary evidence within one year of its request.

(ii) The effective date of the increase will be the date the VA receives notice of the dependent's existence if:

(A) The VA receives the claim for the increase more than one year after the date of entrance or reentrance, and

(B) The VA receives any necessary evidence within one year of its request.

(iii) The effective date of the increase will be the date the VA receives all necessary evidence if that evidence is received more than one year from the date the VA requested the evidence.

(2) *Dependency arises after entrance of reentrance into a rehabilitation program.* If the veteran acquires a dependent after he or she enters or reenters a rehabilitation program, the increase will be effective on the latest of the following dates:

(i) *Date of claim.* This term means the following listed in order of their applicability:

(A) Date of the veteran's marriage, or birth of his or her child, or his or her adoption of a child, if the evidence of the event is received within 1 year from the date of the VA request for this evidence;

(B) Date notice is received of the dependent's existence if evidence is received within 1 year from the date of the VA request for this evidence;

(C) Date the VA receives evidence of the dependent's existence if this date is more than 1 year after the VA request for this evidence;

(ii) *Date dependency arises.*

(3) *Increased award not permitted.* No increased award for dependency may be paid prior to the date the law permits benefits for dependents generally. (38 U.S.C. 1508(b)).

* * * * *

Cross-Reference. See § 21.260(c) for definition of dependents.

[FR Doc. 87-11666 Filed 5-20-87; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3204-3]

Approval and Promulgation of Implementation Plans, Massachusetts; Group III CTG Regulation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Massachusetts. This revision requires reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from synthetic organic chemical and polymer manufacturing equipment. The intended effect of this action is to reduce statewide ozone levels as required under Section 110 and Part D of the Clean Air Act.

DATE: Comments must be received on or before June 22, 1987. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Building, Boston, MA 02203; and the Division of Air Quality Control, Department of Environmental Quality Engineering, One Winter Street, Eighth Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lynne A. Hamjian (617) 565-3246; FTS 835-3246.

SUPPLEMENTARY INFORMATION: As a 1987 extension area for ozone, the State of Massachusetts is required to adopt reasonably available control technology (RACT) regulations for all source categories covered under EPA's Control Techniques Guideline (CTG) documents. The Massachusetts 1982 Ozone Attainment Plan was approved with a schedule for adopting the Group III CTG control measures. On November 5, 1986, the Department of Environmental Quality Engineering (DEQE) submitted a revision to the Massachusetts State Implementation Plan (SIP) to add Regulation 310 CMR 7.18(19), "Synthetic Organic Chemical Manufacture." This regulation requires synthetic organic chemical manufacturing (SOCM) facilities to implement a quarterly leak detection and repair program to control fugitive volatile organic compound (VOC) emissions. This regulation also requires each source to keep a detailed inspection log and to submit quarterly reports to DEQE.

The final regulation formally submitted by the DEQE is consistent with the following CTG document: *Control of VOC Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment (EPA-450/3-83-006).*

Proposed Action

EPA is proposing to approve 310 CMR 7.18(19) as a revision to the Massachusetts SIP. This regulation requires a control program for fugitive VOC leaks from synthetic organic chemical manufacturing facilities in Massachusetts.

A more detailed description of EPA's evaluation of the above regulatory change is presented in the Technical Support Document that has been prepared for this revision. That document is available for public inspection at the locations listed in the **ADDRESSES** section of this notice.

EPA is soliciting public comments on this notice and on issues relevant to today's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to the EPA Regional Office listed at **ADDRESSES**, above.

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

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

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of sections 110(a)(2)(A) through (K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: January 12, 1987.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 87–11643 Filed 5–20–87; 8:45 am]

BILLING CODE 6560–50–M

LEGAL SERVICES CORPORATION

45 CFR Part 1602

Procedures for Disclosure of Information Under the Freedom of Information Act

AGENCY: Legal Services Corporation.

ACTION: Proposed Regulation.

SUMMARY: This proposed rule revises Part 1602 of the Legal Services Corporation's regulations, 45 CFR 1602, governing the disclosure of information under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552 *et seq.* First, these revisions implement the Freedom of Information Reform Act of 1986 ("Reform Act") which requires that each entity subject to the FOIA shall promulgate regulations containing a schedule of fees in accordance with the guidelines issued by the Office of Management and Budget ("OMB"). Second, this proposed rule changes paragraph (a)(6) of 45 CFR 1602.9 to give the Legal Services Corporation ("LSC" or "Corporation") greater discretion when making a determination whether to withhold law enforcement records in conformance with the Reform Act's revisions to subsection (b)(7) of the FOIA. Third, this proposed rule changes certain administrative provisions, such as the Corporation's address, and conforms the regulation to current corporate policy that all FOIA requests are handled through LSC's Headquarters, in Washington, DC.

DATE: Comments must be received on or before June 22, 1987.

ADDRESS: Comments may be submitted to the Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy B. Shea, General Counsel, Office of the General Counsel, (202) 863–1823.

SUPPLEMENTARY INFORMATION: Although under the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996 *et seq.*, the Corporation is not considered an agency of the Federal government, 42 U.S.C. 2996d(g), section 1005(g) of the Act, provides that the Corporation, its officers and employees shall be subject to the FOIA. Pursuant to Pub. L. 99–570, section 552(a)(4)(A) of the FOIA now requires covered agencies to create fee schedules in conformance with guidelines promulgated by the Director of the OMB. Because the Corporation is subject to the FOIA, the proposed rule conforms fee and fee waiver provisions to OMB's guidelines.

Section 1602(a)(6) of this regulation has been revised in accordance with the amendments made to section 552(b)(7) of the FOIA. Those portions of the new law which specifically address criminal law enforcement authorities have not been included in this proposed rule as they are not pertinent to the Corporation's work.

In 1976, the Corporation promulgated Part 1602 of its regulations to implement section 1005(g) of its Act. Some of the information contained in Part 1602, such as the Corporation's address, is no longer accurate. Changes such as these are also included in the revisions set forth below.

The major change in Part 1602 is the revision of the fee schedule to conform to the Reform Act and the guidelines issued by OMB. For the first time the FOIA establishes categories of requesting parties. The four groups of FOIA requesters are: (1) Commercial use requesters, (2) educational and non-commercial scientific institutions, (3) representatives of the news media, and (4) all other requesters. When determining a requesting party's proper category the Corporation shall look at the use to which a requester will put the documents. Requesters should reasonably describe the records sought and the use for which they are requested. The former fee schedule is changed to permit the Corporation to charge fees for document search, duplication and review for commercial use requesters. When requests are received from educational institutions, non-commercial scientific institutions, or news media representatives, the Corporation shall charge only for document duplication. For all other requesters, the Corporation shall charge for the costs of document search and duplication. The definitions of what constitutes "commercial users", "educational institutions", "non-commercial scientific institutions" and "news media representatives" are contained in § 1612.2 of the text.

The new fee schedule sets forth corporate staff categories to reflect the direct labor costs attributable to a document search or review. Accordingly, definitions for "direct costs," "search," "duplication," and "review" have been added. In addition, the proposed rule will permit the Corporation to charge for the cost of mailing FOIA responses. The costs incurred by the Corporation for the first two hours of search time and the first 100 pages of duplication will not be charged to the requesting party.

Fee waivers will be warranted if the requester can satisfactorily demonstrate that the disclosure of requested information is in the public interest because it is likely to significantly contribute to the public's understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

The Corporation may require full advance payment of a fee if it is estimated to exceed $250 or if the requester has failed to pay a previously owed fee in a timely manner. In addition, the Corporation may charge interest if a fee has not been paid within 31 days of dispatch of the FOIA response.

Section 1602.9(a)(6) has been changed to add a "reasonableness" test which the Corporation shall apply when making a determination whether to release law enforcement information. The requested information may be withheld if the Corporation determines that its disclosure could reasonably be expected to constitute an unwarranted invasion of privacy, disclose a confidential source, endanger the life or physical safety of any individual, or, in the case of law enforcement investigations, risk circumvention of the law.

In sum, the changes proposed in this document are:

1. The Table of Contents of Part 1602 is revised by removing § 1602.6 entitled, "Regional records room," to reflect the abolition of the Corporation's regional offices as a source of FOIA records. To avoid renumbering the remaining sections, § 1602.6 is reserved for future use.

2. Sections 1602.1 and 1602.2 are amended by removing the phrase "as amended in 1974" as unnecessary.

3. The definitions "Clerical", "Professional Support", "Professional Staff", and "Management" have been added to § 1602.2 to explain the categories used in the fee schedule set forth in § 1602.13.

4. The definitions "Commercial use request", "Educational institution", "Non-commercial scientific institution", and "Representatives of the news

media" have been added to § 1602.2 to reflect statutory changes made in the FOIA and to conform to the OMB guidelines

5. The definitions in § 1602.2 have been arranged alphabetically for simplicity and the former alphabetical numbering system has been removed.

6. The references to the regional offices in §§ 1602.4 and 1602.7 have been corrected and in § 1602.6 have been removed to reflect the fact that all record requests are being processed in Washington, DC.

7. Section 1602.5(a) is revised to reflect the Corporation's new address.

8. Section 1602.9(a)(6) is revised to conform with section 1802(a) of Pub. L. 99-570, the Reform Act. Paragraph (b) of Section 1802 of Pub. L. 99-570 is not included in these revisions because the Corporation has no involvement in criminal law enforcement proceedings.

9. Paragraphs (b) through (j) of § 1602.13 have been revised to implement section 1803 of the Reform Act in accordance with the OMB guidelines. Former paragraph (h) has been renamed paragraph (k).

For the reasons set out above, it is proposed that Part 1602 of Title 45 of the Code of Federal Regulations be amended as follows:

PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

1. The authority citation for Part 1602 continues to read as follows:

Authority: Sec. 1005(g), 42 U.S.C. 2996d(g).

1a. The table of contents of Part 1602 is revised as follows:

Sec.
1602.1 Purpose.
1602.2 Definitions.
1603.3 Policy.
1602.4 Index of records.
1602.5 Central records room.
1602.6 [Reserved]
1602.7 Use of records room.
1602.8 Availability of records on request.
1602.9 Invoking exemptions to withhold a requested record.
1602.10 Officials authorized to grant or deny requests for records
1602.11 Denials.
1602.12 Appeals of denials.
1602.13 Fees.

§ 1602.1 [Amended]

2. Section 1602.1 is amended by removing the phrase "as amended in 1974."

3. Section 1602.2 is revised to read as follows:

§ 1602.2 Definitions.

As used in this part—

"Clerical" means secretaries and clerks.

"Commercial use request" means request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. When the Corporation has reasonable cause to doubt the use to which a requester will put the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a specific category. If still in doubt, the Corporation will make the determination based on the factual circumstances surrounding the request, including the identity of the requester.

"Direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

"Duplication" means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

"Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

"FOIA" means the Freedom of Information Act, 5 U.S.C. 552;

"Management" means unit managers, office directors, and corporation officers.

"Non-commercial scientific institution" means an institution that is not operated on a "commercial" basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

"Professional Staff" means assistants to directors, staff attorneys, monitoring analysts, auditors, and computer programmers/analysts.

"Professional Support" means administrative assistants and junior accountants.

"Records" means books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include *inter alia*, books, magazines, or other materials acquired solely for library purposes and available through any officially designated library of the Corporation.

"Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

"Review" means the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

"Search" means all the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The search should be conducted in the most efficient and least expensive manner. Searches may be done manually or by computer using existing programming.

§ 1602.4 [Amended]

4. Section 1602.4, is amended by removing the words "and at each regional office" after the words "D.C.".

§ 1602.5 [Amended]

5. Section 1602.5(a), "Central records room," is amended by removing the phrase "733 Fifteenth Street, NW., Suite 700, Washington, DC 20005, (202) 376–5100" and substituting "400 Virginia Avenue, SW., Washington, DC 20024–2751, (202) 863–1820".

§ 1602.6 [Removed]

6. Section 1602.6, "Regional records rooms," is removed and reserved.

§ 1602.7 [Amended]

7. Section 1602.7(a), is amended by removing the words "or a regional" after the word "central." It is further amended by removing the words "although persons wishing to make extended use of regional office facilities should take account of the possible limitations in these facilities" after the word "required".

8. Paragraph (a)(6) of § 1602.9 is revised to read as follows:

§ 1602.9 Invoking exemptions to withhold a requested record.

(a) * * *

(6) Records or information compiled for enforcing the act or any other law, but only to the extent that the production of such law enforcement records or information (i) could reasonably be expected to interfere with enforcement proceedings, (ii) would deprive a person of a right to a fair trial or an impartial adjudication, (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (iv) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, (v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (vi) could reasonably be expected to endanger the life or physical safety of any individual;

* * * * *

§ 1602.10 [Amended]

9. Section 1602.10 is amended by removing the words "each Regional Director," and "each Regional Records Officer."

10. Paragraphs (b), (c), (d), (e)(1) (i) through (iii) are revised; (e)(1)(iv), (6) and (7) are added; (f) through (h) are revised and (i) through (k) are added to § 1602.13 to read as follows:

§ 1602.13 Fees.

* * * * *

(b) Fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(c) Fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or non commercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(d) For any request not described in paragraph (b) or (c) of this section, fees shall be limited to reasonable standard charges for document search and duplication.

(e) The schedule of charges for services regarding the production or disclosure of the Corporation's records is as follows:

(1) Search for records and production of information is based on the following schedule of direct labor charges:

(i) Clerical=$2.77/quarter hour.

(ii) Professional Support=$3.45/quarter hour.

(iii) Professional Staff=$4.99/quarter hour.

(iv) Management=$8.37/quarter hour.

* * * * *

(6) Packing and mailing records: Actual charges as incurred.

(7) Special delivery or express mail: Actual charges as incurred.

(f) Documents shall be furnished without any charge or at a charge reduced below the fees established under paragraph (e) of this section if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(g) No fee will be charged under this section—

(1) If the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(2) For any request described in paragraphs (b), (c), or (d) of this section for the first two hours of search time or for the first one hundred pages of duplication.

(h) No requester will be required to make an advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion or the Corporation has determined that the fee will exceed $250.

(1) In the event that a requester has previously failed to pay a required fee (within 30 days of the date of billing), an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. The request will not be deemed to have been received by the Corporation until such payment is made.

(2) In the event that the Corporation determines that an estimated fee will exceed $250, the requesting party shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. The notification shall offer the requesting party the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet his needs at a reduced cost. The request will not be deemed to have been received by the Corporation until an advance payment of the entire fee is made.

(i) Interest will be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(j) If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Corporation shall aggregate such requests and charge accordingly.

(k) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requesting party or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

Dated: May 19, 1987.

Timothy B. Shea,

General Counsel.

[FR Doc. 87–11560 Filed 5–20–87; 8:45 am]

BILLING CODE 6820–35–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-04; Notice 2]

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Safety Administration (NHTSA), Department of Transportation.

ACTION: Response to petition for extension of time to comment; Extension of comment period.

SUMMARY: This notice responds to a petition, submitted by International Transquip Industries, asking that the comment period be extended on a notice of proposed rulemaking (NPRM) to amend the parking brake requirements of Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*. The comment period was scheduled to close on May 18, 1987. The closing date is extended to June 17, 1987.

DATE: The comment period for Docket No. 87-04, Notice 1, is extended so that it closes June 17, 1987.

ADDRESS: Comments should refer to Docket 87-04 and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The docket is open on weekdays from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Shadle, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202-366-5273).

SUPPLEMENTARY INFORMATION: On March 17, 1987, NHTSA published in the **Federal Register** (52 FR 8317) a notice of proposed rulemaking (NPRM) to amend Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*. The notice summarized the proposal as follows:

> False parking occurs where, subsequent to the application of a vehicle's parking brakes by the driver, the design of the vehicle's parking brake system permits the parking brake force to gradually decrease, creating a risk of the vehicle rolling away after the driver has left the vehicle. The proposed amendments would ensure that systems which result in "false parking" are prohibited. As part of this action, the agency is also proposing to require that vehicles be capable of meeting requirements related to parking brake retardation force within two seconds of the time the parking brakes are actuated. This rulemaking action was initiated in response to a petition for rulemaking submitted by the California Highway Patrol.

International Transquip Industries submitted a petition asking for a 180-day extension of the 60-day comment period for the NPRM. The petitioner stated that adoption of the proposal would have a substantial impact on it and that, given finite resources, the company cannot respond properly within the 60-day period.

The company stated, in the petition and/or in a subsequent meeting with NHTSA representatives, that the purpose of the requested extension was to enable it to conduct testing to evaluate the premise of the proposal, whether the proposal balance safety issues such as stopping distance and shop safety, and what potential design ramifications the proposal would have on that company's products. The company stated that it was requesting a 180-day extension because it needs time to develop specific test plans, to schedule the tests at a test track, to lease vehicles for the tests, to conduct the tests, and to evaluate the test results. Also, in a letter dated May 12, 1987, International Tansquip suggested that NHTSA's decision to issue the NRPM may have been based on old data from tests "several years olds" performed by the agency or others on that company's brake. The company argued that equity and fariness demand that a rulemaking be based on the most current data available to the agency.

Petitions for extension of time to comment are only granted if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest. See 49 CFR 553.19.

NHTSA believes that the 60-day comment period has provided sufficient time for interested persons, including International Transquip, to submit meaningful comments. Even if that company has not been able to conduct a test program within the 60 days, it can provide qualitative comments on the issues it wishes to address. For example, it can present arguments about the premise of the proposal and whether safety issues are appropriated balanced. Similarly, through use of engineering analysis, the petitioner can identify and discuss the potential impacts adoption of the proposal could have on its products, while arguing that more precise analysis would require lengthy testing.

The agency notes that the decision to isue an NPRM was based on a general concern about false parking and not on test data for International Transquip's brake. Moreover, to the extent that company believes that information in the docket concerning its brake, whatever the source, may be insufficiently up-to-date, it can demonstrate that point without conducting a test program.

Given that NHTSA believes that the 60-day comment period has provided a sufficient opportunity for International Transquip and others to prepare and submit meaningful comments and that the proposal was issued in light of an agency concern about the safety hazards of certain braking systems already installed on some vehicles and being sold for installation of new vehicles, the agency concludes that a several month extension of the comment period is not consist with the public interest. The agency also notes that if, after consideration of all the comments, it concludes that reopening the comment period would be in the public interest, it could take that action.

While NHTSA declines to adopt a several month extension of the comment period, it has concluded that a 30-day extension is appropriate. The extension will ensure that to the extent that International Transquip may not have prepared the type of comments discussed above, it can still do so. The new closing date for comments is June 17, 1987.

International Tansquip remains free, of course, to conduct testing. As indicated in the NPRM, NHTSA considers to the extent possible comments filed after the closing date. Also, comments received too late for consideraiton in regard to a final rule are consistent as suggestion for further rulemaking action.

NHTSA notes that a number of arguments made in International Transquip's petiton address the merits of the proposal and the sufficiency of the agency's analyses. These comments will be fully considered by the agency in the course of the rulemaking, in accordance with statutory criteria.

For the reasons discussed above, International Tansquip's petition for extension of time to comment is granted only to the extent of a 30-day extension, and otherwise denied.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

Issued on: May 15, 1987.

Marilynne Jacobs,

Acting Associate Administrator for Rulemaking.

[FR Doc. 87-11601 Filed 5-18-87; 11:19 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 52, No. 98
Thursday, May 21, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

May 15, 1987.

The Department of Agriculture has submitted to OMB 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. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (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 provide the information; (8) An indication of whether section 3504(h) of P.L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Food and Nutrition Service
OMB Circular A-102; Financial Status Report
SF-269; SF-270
Recordkeeping, quarterly
State or local governments; 985 responses; 1,489 hours; not applicable under 3504(h)
Juanita Johnson (703) 756-3100

- Forest Service
Application for Prospecting Permit
R1-FS-2820-12
On occasion
Individuals or households; Small businesses or organizations; 50 responses; 12 hours; not applicable under 3504(h)
W. Mark Weber (406) 585-3592

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 87-11619 Filed 5-20-87; 8:45 am]
BILLING CODE 3410-01-M

Soil Conservation Service

Finding of No Significant Impact; Elton Creek #1 Critical Area Treatment RC&D Measure, New York

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 Elton Creek #1 Critical Area Treatment RC&D Measure, Cattaraugus County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) ;423-5521.

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, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The measure concerns a plan for reducing critical erosion along a streambank in the Town of Freedom which results from high flows, stream degradation, and non-cohesive soils. The integrity of the existing levee will be assured through the installation of project measures. The planned works of improvement include the repair of the existing levee, construction of additional levee, installation of 3 sills, removal of gravel bars, installation of filter cloth, installation of riprap, and seeding and mulching of all disturbed areas.

The Notice of 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 is on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: May 8, 1987.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and Local officials)

Paul A. Dodd,
State Conservationist.

[FR Doc. 87-11568 Filed 5-20-87; 8:45 am]
BILLING CODE 3410-16-M

Finding of No Significant Impact; Gilmantown Roadbank Critical Area Treatment RC&D Measure, New York

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pusuant 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 Gilmantown Roadbank Critical Area Treatment RC&D Measures, Hamilton County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423–5521.

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, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The measure concerns a plan for reducing critical erosion along a series of roadbanks in the Town of Wells which results from surface runoff, steep unstable slopes, and lack of protective vegetative cover. The amount of sediment entering Elbow Creek will be reduced through the installation of project measures. The planned works of improvement include the installation of surface water control, the installation of a gabion revetment along the lower portion of each slope, and the reshaping and seeding of the banks.

The Notice of 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 date developed during the environmental assessment is on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: May 8, 1987.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and Local officials)

[FR Doc. 87–11569 Filed 5–20–87; 8:45 am]

BILLING CODE 3410–16–M

Findings of No Significant Impact; Wolf Creek Road Critical Area Treatment RC&D Measure, New York

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 statment is not being prepared for the Wolf Creek Road Critical Area Treatment RC&D Measure, Allegany County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423–5521.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an evnironmental impact statement is not needed for this project.

The measure concerns a plan for reducing critical erosion along a streambank in the Town of Genesee which results from high flows and stream alignment. The amount of sediment entering Dodge Creek will be reduced through the installation of project measures. The planned works of improvement included the installation of heavy rock rip-rap, the installation of filter fabric along the bank, and grading, shaping, and seeding of the eroding bank.

The Notice of 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 is on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: May 8, 1987

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and Local officials)

Paul A. Dodd,

State Conservationist.

[FR Doc. 87–11570 Filed 5–20–87; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Georgia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 3:30 p.m. and adjourn at 6:30 p.m. on June 8, 1987, at the Holiday Inn Downtown, Ellis Room, 175 Piedmont Avenue, NE., Atlanta Georgia. The purpose of the meeting is to collect information on and discuss the reporting of incidents of bigotry and hate motivated violence in Georgia and to plan activities for FY 87–88.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Vice Chairperson, Elaine Alexander or John I. Brinkley, Director of the Eastern Regional Division at (202) 523–5264, (TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 13, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–11628 Filed 5–20–87; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–607]

Final Determination of Sales at Not Less Than Fair Value; Paint Filters and Strainers From Brazil

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that disposable paint filters and strainers (paint filters and strainers) from Brazil are not being, nor are likely to be, sold in the United States at less than fair value. We have also determined that critical circumstances do not exist in this investigation.

EFFECTIVE DATE: May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Charles 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) 377–5332 or 377–5288.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that paint filters and strainers from Brazil are not being, nor 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 (the Act) (19 U.S.C. 1673d(a)). We made fair value comparisons on virtually all of the sales of paint filters and strainers to the United States during the period of investigation, February 1 through July 31, 1986. Comparisons were based on United States price and foreign market value, based on third country sales. The weighted-average margin is 0.03 percent. This is *de minimis*.

Case History

On December 22, 1986, we made an affirmative preliminary determination (51 FR 47037, December 30, 1986). Since then, the following events have occurred:

On December 23, 1986, the respondent requested a postponement of the final determination. We granted this request and postponed the due date for the final determination until no later than May 15, 1987 (52 FR 3158, February 2, 1987).

As required by the Act, we afforded interested parties an opportunity to submit oral and written comments addressing the issues arising in this investigation. On April 10, 1987, we held a public hearing to allow parties to address the issues.

Scope of Investigation

The products covered by this investigation are disposable paint filters and strainers of paper, containing cotton gauze, provided for in item 256.9080 of the *Tariff Schedules of the United States Annotated* (TSUSA), disposable paint filters and strainers of cotton gauze, containing paper, provided for in item 386.5300 of the TSUSA, and disposable paint filters and strainers of nylon mesh, containing paper, provided for in item 389.6270 of the TSUSA.

Fair Value Comparisons

In order to determine whether sales of the subject merchandise to the United States were made at less than fair value, we compared the United States price with the foreign market value, based on third country prices.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price since the merchandise was purchased by the unrelated U.S. customer directly from the foreign manufacturer prior to importation. We calculated the purchase price based on the packed, c.&f. price to unrelated purchasers in the United States. We made deductions for port charges, foreign inland freight, ocean freight and bank handling charges.

Foreign Market Value

In accordance with section 773(a) of the Act, we have determined that Cia. Industrial Celulose e Papel Guaiba (CELUPA) had no sales of paint filters and strainers in Brazil during the period of investigation. The petitioner alleged that sales to third countries were at prices below the cost of producing the merchandise. We examined production costs which included all appropriate costs for materials, fabrication and general expenses. We found sufficient sales in Switzerland above the cost of production to allow us to use Swiss prices in accordance with section 773(a)(1)(B) for foreign market value.

We calculated third country price on the basis of the packed, c&f. prices to unrelated customers in Switzerland. We made deductions for port charges, foreign inland freight, ocean freight and bank handling charges. We made adjustments for differences in circumstances of sales in accordance with section 353.15 of our regulations for differences in credit expenses and commissions between the two markets. We made adjustments to similar merchandise to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act. These adjustments were based on differences in the costs of materials, direct labor and directly related factory overhead.

We deducted Swiss market packing costs and added the packing costs incurred on sales to the United States.

Pursuant to § 353.56 of Commerce's Regulations, we made currency conversions at the rates certified by the Federal Reserve Bank.

Negative Determination of "Critical Circumstances"

Petitioners alleged that imports of paint filters and strainers present "critical circumstances," as defined by section 733(e) of the Act. Since we have determined that paint filters and strainers have not been sold in the United States at less than fair value, the issue of "critical circumstances" is moot in this determination.

Verification

As provided in section 776(a) of the Act, we verified all information provided by the respondent, using standard verification procedures, including examination of accounting records and original source documents containing relevant information on selected sales.

Petitioner's Comments

Comment 1: Petitioner argues that the Department should base foreign market value on constructed value because CELUPA has engaged in predatory pricing in the U.S. and European markets. The Department has the authority to disregard third country prices and should do so here, in petitioner's view, because (1) the purpose of the antidumping law is to ensure that prices to the United States are not less than they would be in the home market and prices in Brazil boomed during the period, and (2) third country sales are a small proportion of total exports.

DOC Position: While the Department does have the authority to disregard third country prices as the basis for calculating foreign market value, § 353.4 of our regulations expresses a preference for using third country prices when possible. We have determined that there are adequate sales to the third country, that those third country sales were not made at a prices below the cost of production and that there was no price discrimination between the third country and the United States. For these reasons, we do not agree that foreign market value should be based on hypothetical prices that might have existed in the home market.

Comment 2: Petitioner asserts that CELUPA and its subcontractor, Riedus, are related parties, as defined in section 773(e)(3) of the Act. Petitioner bases its assertion of relationship on the facts that: (1) The establishment of Riedus was at the direction of Celupa; (2) a company like Riedus, capitalized at less than $100, cannot produce tens of

millions of strainers by itself; (3) Riedus is owned by Mrs. Santos; (4) under Brazilian law, a married couple own together all property owned by the other, and (5) as Administrative Director of CELUPA, Mr. Santos runs that company.

Because of this relationship, petitioner asks that the Department disregard prices between CELUPA and Riedus. Moreover, because Reidus did not submit cost information on its operations, the Department should construct an arm's length price between the two companies based on petitioner's data, including a profit of 24.2 percent, the reported profit margin for the Brazilian paper and pulp industry during the period of investigtion.

DOC Position: We do not find that CELUPA and Riedus are related parties within meaning of 773(e)(3). There was considerable confusion concerning the status of Mr. Santos with CELUPA, who has been described variously as an officer, director, member of the diretoria, and department head. Petitioner would have the Department believe that he is an officer, while respondent describes him as an employee, and attributes the resulting confusion to translation difficulties and unfamiliarity with Brazilian corporations. We have determined that Mr. Santos was appointed on April 30, 1986 to the CELUPA Board of Directors, after the contract was signed with Riedus. Moreover, the evidence in the record concerning communal ownership by spouses is conflicting. Given the conflicting nature of the evidence on communal property and the fact that Mr. Santos was not on the Celupa Board of Directors at the time of the contract with Riedus we do not find the parties related.

Secondly, under section 773(e)(2), the Department may disregard transactions between related parties if the price does not fairly reflect the amount usually reflected on sales of the merchandise under consideration. Because CELUPA did not subcontract similar work from the other companies, it was not possible to ascertain whether the price between Riedus and CELUPA was similar to prices other subcontractors would charge. However, based on its financial statements, Riedus is a profitable company. Moreover, Riedus performs work only for CELUPA and, thus, its profits derive from its work for CELUPA. Given Riedus' profitability and the fact its prices are not below cost, it is reasonable to assume that the prices between Riedus and CELUPA are at a fair value.

Finally, we note that were we to find a relationship between CELUPA and Riedus our normal practice would be to "collapse" the two companies and calculate a single cost of production, based on the cost of the combined entity. Hence, we would not impute a profit of Riedus' activities and the resulting cost of production would likely have been lower than the cost of production we calculated treating the two companies as not being related.

Comment 3: Petitioner argues that in calculating CELUPA's cost of production, depreciation and labor for the paint filter paper should be specifically identified and allocated to paint filter paper rather than allocating costs over total production, including coffee filters.

DOC Position: We agree.

Comment 4: The petitioner argues that is would be improper to allocate commercial, general and administrative expenses for CELUPA based on percentage of sales rather than cost of sales.

DOC Position: We agree. See our reply to respondent's comment 8.

Comment 5: The petitioner argues that the monetary correction, losses for holding inventory and replacement costs for all inventory should be utilized in calculating CELUPA's cost of production.

DOC Position: See our reply to respondent's comment 5.

Comment 6: The petitioner argues that financial expenses and income should not be netted and monetary variation of the loan principal should not be included in cost of production.

DOC Position: We agree that financial income should not be netted against financial expenses to the extent that the income is the result of long term investments. We also agree that monetary variation of the loan principal is not a cost of production.

Comment 7: The petitioner argues that transportation, handling, quality control, supervisory expenses and waste should be included in the cost of production.

DOC Position: We agree and they are included in the cost of production. Transportation and handling are included in Riedus' billings to CELUPA. Quality control is included as a factory overhead expense. CELUPA supervisory expenses are included in general and administrative expenses. Waste is included in the yields from production.

Comment 8: The Petitioner argues that the Department should use the profit margin (24.2%) for the pulp and paper industry in determining constructed value for CELUPA.

DOC Position: Because we used third country sales as the basis for calculating foreign market values, this issue is moot.

Comment 9: Corrections should be made to Swiss and U.S. prices for port charges, credit expenses and bank handling charges as indicated in the verification report.

DOC Position: We agree. Corrections have been made.

Comment 10: Petitioner argues that double commissions were paid and that an additional deduction must be made for commissions paid. Petitioner further alleges that respondent misled the Department, and that the Department should not base its determination on such submissions pursuant to 18 U.S.C. 1001 (Fraud and False Statement).

DOC Position: During the verification, the Department found that a single commission was paid to a single commissionaire. This was established in a contract between CELUPA and the commissionaire.

Comment 11: Petitioner argues that discrepancies exist for packing costs between CELUPA and Riedus, and suggests these costs should be reconciled upward as appropriate.

DOC Position: We verified the actual elements of cost related to packing. We used the actual packing cost, for both the European and U.S. sales.

Comment 12: All information submitted by respondent, particularly verification information, should be made available to counsel for petitioner under protective order.

DOC Position: Our longstanding administrative practice given the highly sensitive nature of the verification exhibits is not to show them to petitioner. We have maintained our normal practice in this case. Petitioner has had access to all other proprietary information under an appropriate administrative protective order.

Comment 13: Petitioner asserts that false information was submitted to the Department.

DOC Position: Finding omissions or errors in responses is common during verification. While the deficiencies in CELUPA's response were found at verification, the nature, magnitude and number of these problems were not sufficient to invalidate or discredit the response itself.

Respondent's Comments

Comment 1: Respondent argues that we should use third country sales to determine foreign market value.

DOC Position: We agree. See response to petitioner's comment 1.

Comment 2: Respondent argues that CELUPA and Riedus are not related parties.

DOC Position: We agree. See our response to petitioner's comment 2.

Comment 3: The respondent argues that the exchange fees and bank charges should not be included in credit expenses. This is because exchange fees are incidental to overall exports. Moreover, the Department does not allow credit for gains from the foreign exchange contracts and, therefore, should not include the costs of those contracts.

DOC Position: We agree and have deducted the exchange fees and bank charges from U.S. and Swiss sales. In this investigation, the amount of the exchange fees and bank charges can be tied to each transaction. The deduction of such fees is unrelated to foreign market exchange gains. The fees are actual costs incurred in selling in the United States and Switzerland. The gains are only nominal gains—any increased amount of cruzados received by waiting ten days to repatriate dollars will be offset by the decreased purchasing power of the cruzados.

Comment 4: The respondent argues the Department should not, and does not have the authority to, expand the scope of this investigation to include paint strainers made of man-made fibers because they were not exported to the United States.

DOC Position: We disagree. The Department has the authority not only to define the scope but also to clarify the statement of a scope of investigation. Paint strainers made of man-made fibers are the same class or kind of merchandise as cotton and paper strainers which have the same uses and functions.

Comment 5: The respondent argues that the Department should not include monetary correction in the cost of production because the monetary correction applies only to one month during the period of investigation. The respondent further states that CELUPA did not produce papers for paint strainers during that month.

DOC Position: We disagree. The monetary correction of the balance sheet was not included. However, monetary correction was appropriately captured, when necessary, in the cost of production by using replacement value for paper used in paint strainers produced prior to the end of the hyperinflation period.

Comment 6: The respondent argues that the Department should make difference in merchandise adjustments based on differences in printing costs.

DOC Position: We disagree. The billings from Riedus do not distinguish between printed and imprinted paint strainers. Therefore, CELUPA does not experience different costs for imprinted and non-imprinted filters.

Comment 7: The respondent argues that the Department should use actual costs, not replacement costs, as a basis for determining the cost of paper for paint strainers. The respondent further states that it is the Department's policy to use replacement cost only when the inflation rate exceeds 50 percent during the period of investigation. The Brazilian inflation rate was less than 25 percent.

DOC Position: We disagree. The Cruzado plan was introduced as of February, 1986, and marked the end of the hyperinflationary period. Paper produced in December, 1985 and January, 1986 was used for production in February and March, 1986. The cost of paper produced in the period prior to February, 1986 was adjusted to reflect the replacement cost when used in a later month's production.

Comment 8: The respondent argues that the Department should not allocate administrative expenses mechanically on the basis of cost of goods sold. In this case, CELUPA's subcontractor, Riedus, incurs many of the labor, material and administrative expenses for paint strainers. Other of CELUPA's products are manufactured entirely by CELUPA. Therefore, the cost of paint filters sold is inflated compared to the costs of other goods sold. As such, allocating administrative expenses on the basis of cost of sales leads to assigning a disproportionate share of administrative expenses to paint filters. To remedy this, administrative expenses should be allocated on the basis of the number of employees in the paper production part of the manufacturing process.

DOC Position: We disagree. Costs associated with contractor services become part of the cost of goods sold at the time of sale of the product; the same as material and labor used for other products. There are elements of supplier administrative expenses in other materials purchased. It is impractical to allocate based on these estimated elements. If allocation were based on number of employees in paper production, the total cost of the paint strainers would not be represented in the allocation.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This determination is being published pursuant to sectin 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

May 15, 1987.

[FR Doc. 87-11669 Filed 5-20-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-608]

Final Negative Countervailing Duty Determination; Paint Filters and Strainers From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of paint filters and strainers as described in the "Scope of Investigation" section of this notice. We have notified the U.S. International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Bradford Ward or Thomas Bombelles, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2239 or 377-3174.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of paint filters and strainers.

Case History

On July 15, 1986, we received a petition in proper form from the Louis M. Gerson Co., Inc., a domestic producer of paint filters and strainers. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Brazil of paint filters and strainers receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 4, 1986, we initiated an investigation (51 FR 28739, August 11, 1986). On August 12, 1986, petitioner amended its petition to allege critical circumstances and requested clarification of the class or kind of merchandise to be included in the scope of investigation.

Since Brazil is entitled to an injury determination under section 701(b) of the Act, petitioner is required to allege that, and the ITC is required to determine whether, imports of the subject merchandise from Brazil cause or threaten material injury to a U.S. industry. On August 29, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of the subject merchandise (51 FR 32257, September 10, 1986).

We presented a questionnaire to the Government of Brazil later requested additional information, and received severaal responses to our inquiries.

There is one known producer and exporter in Brazil of paint filters and strainers that exported to the United States during the review period. That producer is Cia. Industrial Celulose e Papel Guaiba (CELUPA). According to the Government of Brazil, CELUPA accounts for substantially all exports of paint filters and strainers to the United States.

On October 8, 1986, we issued a preliminary negative determination in this investigation (51 FR 36734, October 15, 1986). We preliminarily determined that no benefits constituting subsidies within the meaning of the Act are being provided to manufacturers, producers, or exporters in Brazil of the subject merchandise.

On October 22, 1986, petitioner filed a request for extension of the deadline date for the final determination in the countervailing duty investigation to correspond with the date of the final determination in the companion antidumping duty investigation under section 705(a)(1) of the Act, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98–573) (the 1984 Act) (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, the Department granted an extension of the deadline for the final determination in this investigation to March 6, 1987, the original deadline for the final determination in the antidumping duty investigation (51 FR 40241, November 5, 1986).

On December 23, 1986, counsel for respondent in the antidumping duty investigation requested that the Department postpone the antidumping duty final determination to 135 days from the publication date of our preliminary antidumping duty determination, in accordance with section 735(a)(2) of the Act. We granted this request and postponed our final antidumping duty determination until May 15, 1987. Pursuant to section 705(a)(1) of the Act, as amended by section 606 of the 1984 Act, the deadline for this determination was also postponed until May 15, 1987, to coincide with the revised date of the final antidumping duty determination (52 FR 3159, February 2, 1987).

Verification of the questionnaire response in this investigation was held from February 9 through 13, and also on March 27, 1987. At the request of petitioner, a public hearing was held on April 10, 1987, to afford interested parties an opportunity to present views orally, in accordance with § 355.35 of our regulations.

Scope of Investigation

The products covered by this investigation are disposable paint filters and strainers, of paper, containing cotton gauze, provided for in item 256.9080 of the *Tariff Schedules of the United States Annotated* (TSUSA); disposable paint filters and strainers of cotton gauze, containing paper, provided for in item 386.5300 of the TSUSA; and disposable paint filters and strainers of nylon mesh, containing paper, provided for in item 389.6270 of the TSUSA.

Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this determination, the period for which we are measuring subsidies (the review period) is calendar year 1985. Based upon our analysis of the petition, the response to our questionnaire, our verification, and comments filed by petitioner and respondents, we determine the following:

I. Programs Determined Not To Be Used

We determine that manufacturers, producers, or exporters in Brazil of paint filters and strainers did not use the following programs which were listed in our notice of initiation:

A. Income Tax Exemptions for Export Earnings

Under Decree-Laws 1158 and 1721, Brazilian exporters are eligible for an exemption from income tax on a portion of profits attributable to export revenue. We verified that the respondent company did not receive benefits under this program during the review period.

B. Preferential Working-Capital Financing for Exports

The Carteira do Comercio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil administers a program of short-term working capital financing for the purchase of inputs. During the review period, these loans were provided under Resolution 950, as amended by Resolution 1009.

Under Resolution 950, as amended, the Banco do Brasil pays the lending institution an equalization fee of up to 15 percent of the interest (after monetary correction). The lending bank passes the 15 percent equalization fee on to the borrower in the form of a reduction of the interest due. Receipt of the equalization fee by the borrower reduces the interest rate on these working capital loans below the commercial rate of interest. Resolution 950 loans are also exempt from the Imposto Sobre Operacoes Financeiras (Tax on Financial Operations, or IOF), a tax charged on all domestic financial transactions in Brazil. We verified that the respondent company did not receive benefits under this program during the review period.

C. Export Financing Under the CIC–CREGE 14–11 Circular

Under its CIC–CREGE 14–11 Circular (14–11), the Banco do Brasil provides 180- and 360-day cruzeiro loans for export financing, on the condition that companies applying for these loans negotiate fixed-level exchange contracts with the bank. Companies obtaining a 360-day loan must negotiate exchange contracts with the bank in an amount equal to twice the value of the loan. Companies obtaining a 180-day loan must negotiate an exchange contract equal to the amount of the loan. Loans under this program are also exempt from the IOF. We verified that the respondent company did not receive benefits under this program during the review period.

D. Resolution 330 of the Banco Central do Brasil

Resolution 330 provides financing for up to 80 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export. We verified that the respondent company did not receive benefits under this program during the review period.

E. The BEFIEX Program

The Comissao para a Consessao de Beneficios Fiscais a Programas Especiais de Exportacao (Commission for the Granting of Fiscal Benefits to Special Export Program, or BEFIEX)

grants at least seven categories of benefits to Brazilian exporters:

- First under Decree-Law 77.065, BEFIEX may reduce by 70 to 90 percent import duties and the Imposto sobre Produtos Industrializados (Tax on Industrial Products, or IPI) on the importation of machinery, equipment, apparatus, instruments, accessories and tools necessary for special export programs approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials and intermediary products;
- Second, under article 13 of Decree No. 72.1219, BEFIEX may extend the carry-forward period for tax losses from four to six years;
- Third, under Article 14 of the same decree, BEFIEX may allow special amortization of pre-operational expenses related to approved products;
- Fourth, pursuant to long-term contracts under the BEFIEX program, the Government of Brazil may continue to provide, and certain exporting companies may continue to receive, the IPI Export Credit Premium beyond the termination date of that program;
- Fifth, a total exemption from import duties, IPI, and a tax on distribution of goods may be provided for specially approved export programs;
- Sixth, reduction of federal tax liability through use of a supplementary income tax exemption on dividends from export income; and
- Seventh, the "law of similars," which prohibits importation of products competitive with Brazilian-made products, may be waived.

We verified that the respondent company did not receive benefits under this program during the review period.

F. The CIEX Program

Decree-Law 1428 authorized the Comissao para Incentive a Exportacao (Commission for Export Incentives, or CIEX) to reduce import taxes and the IPI tax up to 10 percent on certain equipment for use in export production. We verified that the respondent company did not receive benefits under this program during the review period.

G. Accelerated Depreciation for Brazilian-Made Capital Equipment

Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the Conselho do Desenvolvimento Industrial (Industrial Development Council or CDI) may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws. We verified that the respondent company did not receive benefits under this program during the review period.

H. Incentives for Trading Companies

Under Resolution 634, as amended by Resolutions 950 and 1009, of the Banco Central do Brasil, trading companies can obtain export financing similar to that obtained by manufactuers under Resolution 950. We verified that the respondent company did not receive benefits under this program during the review period.

I. The PROEX Program

Short-term credits for exports are available under the Programa de Financiamento a Producao para A Exportacao (Export Production Financing Program, or PROEX), a loan program operated by Banco Nacional do Desenvolvimento Economico e Social (National Bank of Economic and Social Development, or BNDES). We verified that the respondent company did not receive benefits under this program during the review period.

J. Resolutions 68 and 509 (FINEX) Financing

Resolutions 68 and 509 of the Conselho Nacional do Comercio Exterior (National Foreign Trade Council, or CONCEX) provide that CACEX may draw upon the resources of the Fundo de Financiamento a Exportacao (Export Financing Fund, or FINEX) to extend dollar-denominated loans to both exporters and foreign buyers of Brazilian goods. Financing is granted on a transaction-by-transaction basis. We verified that the respondent company did not receive benefits under this program during the review period.

K. Loans Through the Apoio o Desenvolvimento Tecnologica a Empresa Nacional (ADTEN)

Petitioner alleges that the Government of Brazil maintains, through the Financiadora de Estudos Projectos (Financing of Research Projects, or FINEP), a loan program, ADTEN (Support of the Technological Development of National Enterprises), that provides long-term loans on terms inconsistent with commercial considerations to encourage the growth of industries and development of technology. We verified that the respondent company did not receive benefits under this program during the review period.

II. Program Determined to Have Been Terminated

IPI Export Credit Premium

Until May 1, 1985, Brazilian exporters of manufactured products were eligible for a tax credit on the IPI. The IPI export credit premium, a cash reimbursement paid to the exporter upon the export of otherwise taxable industrial products, was found to constitute a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the Government of Brazil reinstated it on April 1, 1981.

Subsequent to April 1, 1981, the credit premium was gradually phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). Under the terms of "Portaria" (Notice of the Minstry of Finance) No. 176 of September 12, 1984, the credit premium was eliminated effective May 1, 1985.

Accordingly, we determine that this program has been terminated, and no benefits under this program are accruing to current exports of paint filters and strainers.

Petitioner's Comments

Comment 1: Petitioner contends that, CELUPA received IPI export credit premium payments for a short period beyond the official termination date of that program, the Department should countervail in our final determination the total amount received during the review period. Petitioner asserts that the Department has no statutory discretion, except under the suspension agreement provision, to decline to countervail benefits provided to respondent companies during the review period pursuant to countervailable subsidy programs.

DOC Position: We disagree. The IPI export credit premium was terminated effective May 1, 1985 which was prior to the initiation of this case, and the company did not qualify for benefits under this program on exports after that date. We have consistently calculated the benefit under this program based on the date the premium was earned, not on the date it was received. All funds received under this program were earned before May 1, 1985 and did not benefit exports made after that date.

When a subsidy program is terminated prior to our initiation, and companies may no longer receive benefits as of the date of termination nor would any entries potentially subject to duties benefit from this program, we do not include the value of the benefits received under such terminated programs in our subsidy calculations. Also, such treatment

encourages the termination of subsidy programs by countries subject to investigation.

This case is distinguishable from prior cases where we have included the benefits received pursuant to terminated programs in our calculation of the estimated net subsidy since in those cases, the program has been terminated prior to our preliminary determination but *after* our initiation. Also, those program terminations generally applied only to the product under investigation or only to exports to the United States. In those cases, the programs appeared to have been terminated in direct response to the initiation of specific investigations. In the instant case, the IPI export credit premium program was terminated on May 1, 1985, long before the initiation of this investigation and it has consistently been verified to no longer confer benefits.

Comment 2: Petitioner argues in the alternative that the Department's program-wide change policy is inapplicable to the IPI export credit premium program because the program allegedly has been discontinued and resurrected repeatedly by the Government of Brazil.

DOC Position: Where a program has been terminated prior to the date of the initiation we will not include benefits from that program in our final calculation of the net subsidy. (See our response to Petitioner's Comment 1.)

We have no evidence indicating, nor has petitioner alleged, that the IPI export credit premium has been reinstated. We have also verified that CELUPA is not a party to a BEFIEX contract and, therefore, is not eligible to receive IPI export credit premiums pursuant to a preexisting contract. Therefore, there is no basis for countervailing this program at this time.

Comment 3: Petitioner contends that the Department should rescind its preliminary negative determination in this investigation because CELUPA received a countervailable subsidy during a portion of the review period (IPI export credit premiums), and issue an affirmative determination retroactive to the date of our preliminary determination.

Doc Position: We disagree. The Department does not believe that it has the authority to suspend liquidation retroactively under these circumstances, nor has petitoner cited any statutory provision which might confer such authority. Furthermore, the Department does not consider the IPI export credit premium program to have bestowed countervailable benefits on the respondent since the date of our preliminary determination for the reasons stated in our responses to Petitioner's Comments 1 and 2. Therefore, it would be inappropriate to impose a duty.

Comment 4: Petitioner contends that non-use of the BEFIEX and CIEX programs was insufficiently verified because the verification team was permitted to examine only a list of contracts and no other documents which allegedly prevents "meaningful judicial review."

DOC Position: We disagree. The Verification team examined the Government of Brazil's list of companies participating in these programs, reviewed company documents, and questioned government and company offiicals about CELUPA's non-participation. We are satisfied that the company did not participate in these programs.

Comment 5: Petitioner contends that Melitta do Brasil and Riedus should have been issued separate questionnaries and been investigated because of an alleged close "relationship" with CELUPA through which they might be passing subsidies to CELUPA

DOC Position: We disagree. Petitioner has not made a sufficiently detailed allegation either that countervailable benefits are accruing to Melitta do Brasil or Riedus, or of how any countervailiable benefits might be accuring to CELUPA through either of these two companies. Our verification showed that CELUPA and Melitta do Brasil are simply "sister" companies owned by a single parent, Melitta-Werke Bentz & Sohn, a multinational corporation based in the Federal Republic of Germany.

Similarly, petitioner has failed to make any detailed allegations that Riedus is receiving countervailable benefits or that such benefits are accruing to CELUPA. Riedus is an unrelated subcontractor supplying labor services to CELUPA for assembly of the subject merchandise. We discovered no evidence which would lead us to believe that the relationship between CELUPA and Riedus is other than an arm's-length, business one. This conclusion is consistent with the Final Determination of Sales at Less Than Fair Value involving the same products from Brazil published concurrently with this notice. We are satisfied from our discussions with Brazilian government officials, our review of Brazilian legislation, and our examination of Riedus source documents that the product under investigation is not being subsidized.

Comment 6: Petitioner contends that a loan to CELUPA by its sister corporation, Melitta do Brasil, should be countervailed if the interest charged is less than our benchmark rate.

DOC Position: We disagree. Petitioner's allegations of the nature of alleged subsidization of CELUPA thorugh Melitta do Brasil or other members of the "Melitta group" have been vague and speculative. Petitioner has made no specific allegation that funds transferred to CELUPA thorugh Melitta do Brasil originated with or were made under a program of the Government of Brazil. We found no evidence of such involvement by the government at verification. Accordingly, there is no basis for countervailing this loan.

Comment 7: Petitioner, citing *Atlas Copco, Inc. v. United States*, Slip Op. 86-132 (Court of International Trade, December 12, 1986), contends that Riedus is the "manufacturer" of the subject merchandise, CELUPA being only the exporter of record, and therefore, Riedus should be the proper subject of the Department's investigation.

DOC Position: We disagree. The case cited by petitioner in support of its contention is inapposite. We have verified that CELUPA, not Riedus, is both the manufacturer and the exporter of record of the subject merchandise and that the companies are not related. CELUPA, therefore, is the proper subject of our investigation. Additionally, we examined Riedus' source documents and found no indication that it receives any countervailable subsidies or passes them on to CELUPA.

Comment 8: Petitioner contends that verification of Riedus was insufficient and best information available should be used to determine the value of countervailable subsidies provided to Riedus.

DOC Position: We disagree. We verified that CELUPA and Riedus are not related, that Riedus was not an exporter or manufacturer of the subject merchandise, and the terms of Riedus' subcontractor agreement with CELUPA. Absent an upstream subsidy allegation then, the Department had no authority, obligation, or grounds to seek further information from Riedus. However, we examined certain financial and other records of Riedus and satisfied ourselves that the company received no countervailable benefits.

Comment 9: Petitioner contends that certain tax credits (amounts invested by CELUPA in government-approved development funds which reduce the company's effective corporate income tax rate) should be countervailed. Petitioner also argues that these tax credits should be countervailed because

they provide CELUPA an incentive to acquire its own source of raw materials.

DOC Position: We disagree. In prior cases, the Department has found this tax credit program to be not limited to a specific enterprise, industry, or group thereof and therefore not countervailable. *See, Certain Carbon Steel Products from Brazil: Final Affirmative Countervailing Duty Determination* (49 FR 17988, April 26, 1984). The issues is irrelevant here, however, since CELUPA did not avail itself of this program on taxes paid during the review period.

Comment 10: Petitioner contends that any subsidies received by CELUPA should be countervailed, regardless of whether they amount to less than the Department's *de minimis* standard of 0.50 percent. Petitioner futher argues that the *de minimis* standard is particularly inappropriate in an investigation such as this one involving an allegedly price-sensitive product.

DOC Position: Since we have determined that there are no countervailable subsidies being provided to CELUPA, this issue is moot.

Comment 11: Petitioner contends that CELUPA and/or Riedus may be eligible for FINSOCIAL (similar to Social Security in the United States) tax exemptions. Petitioner also contends that the Department should impose a countervailing duty based on real estate tax exemptions allegedly provided to CELUPA based on property located in an industrial district.

DOC Position: These general allegations were received long after our preliminary determination and shortly before verification. As such, they were too insubstantial and it was too late for us to investigate these alleged programs. However, at verification we saw no evidence of any exemptions granted to CELUPA.

Comment 12: Petitioner contends that certain short-term bank loans to CELUPA are countervailable because they do not carry any interest charges, regardless of whether they are part of a government program. Petitioner contends that there has been no verification of the "offsetting" deposits with and payments through the lending banks by CELUPA which purportedly constitute consideration to the banks. Petitioner also argues that because the submission of the CELUPA loan data was too late to permit meaningful comment or rebuttal, the Department is required to reject it and rely upon best information available.

DOC Position: We disagree. CELUPA received several private bank loans without interest charges. These working capital loans were for periods of less than 30 days. Such loans are provided by commercial banks in Brazil on an informal basis to any customer who agrees to pay their payroll and various taxes through the lending bank. The IOF tax and a tax on collection were charged on these loans. Preferential government credit in Brazil is usually exempt from the IOF tax. Without evidence to the contrary, the Department presumes loans from commercial banks to unrelated parties to be made on commercial terms. Absent some evidence of government involvement or direction in these loans, we do not consider them to provide a countervailable subsidy to CELUPA.

Comment 13: Petitioner criticizes the Department's conduct of verification and general information gathering as inadequate in this countervailing duty investigation (and by implication others) on two grounds; (1) government-to-government communication rather than government-to-company communication permits the Department to be deceivedby unscrupulous parties, and (2) verfification at a central location other than respondent company facilities is insufficient to meet statutory requirements.

DOC Postion: We disagree. We are satisfied that our verification and information gathering procedures are adequate and correct. In this investigation, we examined all necessary documents and sufficiently verified the information relied upon in the final determination.

Respondents' Comments

Comment 1: Respondents contend that the Department has verified that CELUPA recieves no countervailable subsidies from the Government of Brazil.

DOC Position: We agree. See our responses to Petitioner's Comments 1, 2, 3, 6, 9, and 12.

Comment 2: Respondents contend that Riedus is not a manufacturer, producer, or exporter of the subject merchandise but rather a subcontractor to CELUPA and, as such, should not be included in this investigation. Respondents contend that the cases cited by petitioner in this regard do not construe the countervailing duty law but, rather, Customs statutes irrelevant to our investigation.

DOC Position: We agree. See our responses to Petitioner's Comments 7 and 8.

Comment 3: Respondents contend that (a) the Department has verified that Riedus received no subsidies, (b) Riedus is not related to CELUPA, and (c) there has been no showing of an indirect private subsidy passed through Riedus at government direction as required by the statute when private indirect subsidies are alleged.

DOC Position: See our responses to Petitioner's Comments 5 and 7.

Comment 4: Respondents content that no countervailable subsidies have been provided to CELUPA through Melitta because (a) it is legally impossible for the German parent company to provide countervailable subsidies; and (b) Melitta do Brasil has not provided any countervailable subsidies and Department practice is not to assume, without further evidence, that related parties provide such benefits.

DOC Position: We have found no countervailable subsidies provided to CELUPA from any source.

Comment 5: Respondents content that it would be inappropriate for the Department to issue a countervailing duty order, require cash deposits, and subsequently find no subsidy in an administrative review, all on the basis of a program previously and consistently found to be terminated. Receipt of IPI credit premiums during the review period does not justify issuance of a countervailing duty order. Receipt of IPI credit premiums for a short time after the official termination of the program does not indicate that the program was not eliminated.

DOC Position: We have not countervailed the IPI export credit premium program in this case pursuant to our program-wide change policy. See our responses to Petitioner's Comments 1, 2, and 3.

Comment 6: Respondents content that the Department has sufficiently verified that CELUPA did not participate in the BEFIEX program.

DOC Position: We agree. See our response to Petitioner's Comment 4.

Comment 7: Respondents content that the FINSOCIAL tax exemptions for exports is the exemption of an indirect tax relating to exported products and is therefore not a subsidy according to the Subsidies Code Illustrative List of Export Subsidies.

DOC Position: See our response to Petitioner's Comment 11.

Comment 8: Respondents content that the income tax credits identified in Petitioner's Comment 9 are irrelevant to this investigation because the Department has found such generally-available programs not to be countervailable and because neither CELUPA nor Riedus used the program during the review period.

DOC Position: We agree.

Comment 9: Respondents content that the law is silent as to the method of verification required in countervailing

duty investigations and the Department has found verification conducted at central locations and even in the United States to be sufficient.

DOC Position: See our response to Petitioner's Comment 13.

Comment 10: Respondents content that none of the companies received the real estate tax exemptions alleged by petitioner.

DOC Position: See our response to Petitioner's Comment 11.

Negative Final Determination of Critical Circumstances: On August 12, 1986, petitioner amended the July 15, 1986 petition to allege that, pursuant to section 703(e) of the Act, critical circumstances exist with respect to paint filters and strainers from Brazil.

Under section 705(a)(2) of the Act as amended by section 605(a)(1) of the 1984 Act, critical circumstances exist if we find that:

(A) the alleged subsidy is inconsistent with the Agreement, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of investigation over a relatively short period.

Because our final determination is negative, we have determined that manufacturers, producers, or exporters in Brazil of paint filters and strainers do not receive any subsidies inconsistent with the Subsidies Code. Accordingly, we do not need to consider whether there have been massive imports over a relatively short period of time.

Therefore, we determine there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of paint filters and strainers from Brazil.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, and tracing information in the response to source documents, accounting ledgers, and financial statements.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Since this determination is negative, the investigation will be terminated upon the publication of this notice in the **Federal Register.** Hence, the ITC is not required to make a final injury determination.

Administrative Procedures

We afforded interested parties as opportunity to submit written views in accordance with section 355.34 of our regulations (19 CFR 355.34). We also afforded the parties to the proceeding an opportunity to present views orally before the Department at a public hearing held on April 10, 1987, in accordance with § 355.35 of our regulations (19 CFR 355.35).

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

May 15, 1987.

[FR Doc. 87-11670 Filed 5-20-87; 8:45 am]

BILLING CODE 3510-DS-M

State University of New York et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

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). 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 No.: 87-050. Applicant: State University of New York, New York, NY 10010. Instrument: Joyce Display Monitor, Type DM2 WA Phosphor. Manufacturer: Joyce Electronics Ltd., United Kingdom. Intended use: See notice at 51 FR 44825, December 12, 1986. Reasons for this decision: The foreign instument provides high luminance (mean of 300 candelas per square meter) and raster rotation through 360 degrees. Advice submitted by: National Institutes of Health, April 9, 1987.

Docket No.: 87-051. Applicant: Mayo Foundation, Rochester, MN 55905. Instrument: Mass Spectrometer System, Model Bin-10K. Manufacturer: Bio-Ion Nordic AB, Sweden. Intended use: See notice at 51 FR 44825, December 12, 1986. Reasons for this decision: The foreign instrument provides a mass range to 15,000 amu and a mass precision of 0.1%. Advice submitted by: National Institute of Health, April 9, 1987.

Docket No.: 87-052. Applicant: University of Hawaii, Coconut Island, HI 96744. Instrument: Ultrasonic Transmitter with Electromyogram Transduction Capabilities. Manufacturer: VBMCO, Canada. Intended use: See notice at 51 FR 44825, December 12, 1986. Reasons for this decision: The foreign instrument provides underwater acoustic telementry of electromyographic signals from electrodes attached to research animals. Advice submitted by: National Oceanic Atmospheric Administration, February 24, 1987.

Docket No.: 87-054. Applicant: Howard Hughes Medical Institute, Houston, TX 77030. Instrument: Mass Spectrometer, Model ZAB-SEQ. Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: See notice at 51 FR 45792, December 22, 1986. Reasons for this decision: The foreign instrument provides resolution to 125,000 (10% valley), mass range to 15,000 amu at an accelerating potential of 8kV, and FAB capability. Advice submitted by: National Institutes of Health, April 9, 1987.

Docket No.: 87-062. Applicant: University of Florida, Gainesville, FL 32611. Instrument: Nanosecond Fluorescence Spectrometer System 2000. Manufacturer: Photochemical Research Associates, Canada. Intended use: See notice at 51 FR 45793, December 22, 1986. Reasons for this decision: The foreign instrument provides time-correlated single photon counting and a stable light source with a pulse frequency variation less than 0.3 percent. Advice submitted by: National Institutes of Health, April 9, 1987.

Docket No.: 87-101. Applicant: Case Western Reserve University, Cleveland, OH 44106. Instrument: Fluorescence Lifetime Instrument. Manufacturer: Edinburgh Instruments Ltd., United Kingdom. Intended use: See notice at 52 FR 7916, March 13, 1987. Reasons for this decision: The foreign instrument provides nanosecond to millisecond time resolution and time-correlated single photon counting using a pulsed light mode. Advice submitted by: National Institutes of Health, April 9, 1987.

Comments: None received.

Decison: 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. The National Institutes of Health and National Oceanic and Atmospheric Administration advise in the respectively cited memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know 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 any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-11671 Filed 5-20-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Intent to Approve Incorporation of the Chesapeake Bay Critical Areas Protection Program Act and Amending Regulations Into the Maryland Coastal Zone Management Program (MCZMP)

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), Commerce.

ACTION: Approval of the proposed amendment.

SUMMARY: The Office of Ocean and Coastal Resource Management National Oceanic and Atmospheric Administration (NOAA) received a request from the state of Maryland to amend its Coastal Zone Management Program (MCZMP). The proposed amendment to the MCZMP includes the incorporation of the Chesapeake Bay Critical Area Protection Program Act (Chapter 794–1984), the Criteria for Local Critical Area Program Development adopted pursuant to the Chesapeake Bay Critical Area Act (COMAR 14.15.01–11) and the Laws amending the CBCAA: (i) Quorum Requirement (Chapter 601–1986); (ii) Growth allocation (Chapter 602–1986); (iii) Intra-Family Transfers (Chapter 603–1986); and (iv) Impervious Surfaces (Chapter 604–1986). These laws and regulations reflect the State's interest in fostering more sensitive development activity in a consistent and uniform manner along the Chesapeake Bay shoreline and its tributaries by minimizing damage to water quality and natural habitats through the development and implementation of this protection program on a cooperative basis between the State of Maryland and the affected local governments.

The State's request was made pursuant to section 306(g) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1455(g) and implementing regulations at 15 CFR 923.81. The proposed amendment allows for increased predictability and efficiency in the management of the MCZMP.

The Director of the Office of Ocean and Coastal Resource Management has reviewed the amendment request and has made a preliminary determination that it should be approved, and that the MCZMP, as amended, will still constitute an approvable program under § 923.82, and the procedural requirements of section 306(c) of the CZMA will have been met.

The Director also determined that approval of the proposed change does not constitute a major Federal action having a significant effect on the environment. Therefore, an environmental impact statement on the approval of the MCZMP amendment under the National Environmental Policy Act of 1969, as amended, will not be required. Copies of the Finding of No Significant Impact (FONSI), including the supporting Environmental Assessment (EA), and the Director's preliminary determination of approvability are available at the address below.

Comments on the Preliminary Determination to approve the Maryland amendment request and on the EA and FONSI should be made within 30 days from the date of this notice. Address comments to: James P. Burgess, Chief, Coastal Programs Division, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue NW., Washington, DC 20235 (202) 673–5158.

Dated: May 12, 1987.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 87-11681 Filed 5-20-87; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Issuance of Permit; to Jolly Roger Amusement Park (P391)

On April 2, 1987, notice was published in the **Federal Register** (52 FR 10604) that an application had been filed by Jolly Roger Amusement Park, P.O. Box 572, Ocean City, Maryland 21842 to import two (2) Atlantic bottlenose dolphins (*Tursiops truncatus*) and (1) California sea lion (*Zalophus californianus*) for public display.

Notice is hereby given that on *May 13, 1987* as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: May 13, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-11616 Filed 5-20-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products From the Dominican Republic

May 18, 1987.

The Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs, effective June 1, 1987. For further information, contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota reopenings, please call (202) 377–3715.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1983, as amended, between the Governments of the United States and the Dominican Republic establishes specific limits for cotton and man-made fiber textile products in Categories 351 (cotton nightwear and pajamas), 639 (man-made fiber knit shirts and blouses) and 649 (man-made fiber brassieres and body supporting garments), produced or manufactured in the Dominican Republic and exported to the United States during the agreement year beginning on June 1, 1987 and extending through May 31, 1988.

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of

December 18, 1986 establishes, among other things, a designated consultation level for cotton textile products in Category 340 (cotton shirts, not knit), produced or manufactured in the Dominican Republic and exported during the same twelve-month period.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to control imports of cotton and man-made fiber textile products in Categories 340, 351, 639 and 649 at the designated levels.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

May 18, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreements of December 30, 1983, as amended, and December 18, 1986 between the Governments of the United States and the Dominican Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340, 351, 639 and 649, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on June 1, 1987 and extending through May 31, 1988, in excess of the following restraint limits:

Category	12-mo limit
340	190,000 doz.
351	487,616 doz.
639	473,197 doz.
649	2,424,972 doz.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in the Dominican Republic, which have been exported to the United States, in the case of Categories 351, 639, and 649, on and after June 1, 1986; and, in the case of Category 340, on and after December 1, 1986; and extending through May 31, 1987, shall, to the extent of any unfilled balances, be charged to the levels established for those periods. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of December 30, 1983 between the Governments of the United States and the Dominican Republic which provide, in part, that: (1) Specific limits may be exceeded by designated percentages to account for swing, provided that an equal amount in equivalent square yards is deducted from another specific limit; and (2) specific limits may also be increased for carryover and carryforward. Any appropriate future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622); July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-11667 Filed 5-20-87; 8:45 am]

BILLING CODE 3510-DR-M

Amendment to the Export Visa Requirement for Certain Cotton Textile Products Produced or Manufactured in Hong Kong

May 18, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 19, 1987. For further information contact Janet Heinzen, International Trade Specialist (202) 377-4212.

Background

A CITA directive was published in the **Federal Register** (48 FR 2400) on January 19, 1983, as amended, which established export visa requirements for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported to the United States.

A further directive dated April 1, 1987 amended the export visa arrangement with Hong Kong to include the part category designation 314/320-B. The directive further stated that shipments of cotton broadcloth and poplin visaed as Category 314/320-X, exported from Hong Kong between the period January 1, 1987 through February 8, 1987, shall not be denied entry.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to further amend the export visa requirement to allow entry of cotton broadcloth and poplin visaed as Category 314/320-X, exported from Hong Kong between the period January 1, 1987 through March 8, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 Fr 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

May 18, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1983, as amended on April 1, 1987, by the Chairman of the Committee for the Implementation of Textile Agreements that directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Hong Kong which were not properly visaed.

Effective on May 19, 1987 the directive of January 14, 1983, as amended, is hereby

further amended to permit entry of cotton broadcloth and poplin, visaed as Category 314/320-X, which are exported from Hong Kong between the period January 1, 1987 through March 8, 1987.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-11668 Filed 5-20-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade; Application for Designation as Contract Market in Long Term Japanese Government Bond Futures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade ("CBT") has applied for designation as a contract market in long term Japanese government bond futures. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before July 20, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT long term Japanese government bond contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227.

Copies of the terms and conditions of the proposed CBT futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.6 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commisson, 2033 K Street, NW., Washington, DC 20581, by [sixty (60) days after publication].

Issued in Washington, DC, on May 15, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87-11614 Filed 5-20-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command (MTMC)

ACTION: International/domestic rate application for personal property shipments.

SUMMARY: As a result of varying rates on file for multiple areas controlled by a single shipping office area of responsibility, an agreement was reached between the General Services Administration and MTMC which changes the application of rates for both domestic and international personal property shipments.

MTMC plans to remedy this situation by changing the application of line-haul rates (a percentage for domestic and a single-factor rate for international shipments) to the rate applicable to the destination shown at block 18 of the Personal Property Government bill of lading (PPGBL) (Standard Form 1203).

DATES: Domestic Shipments: November 1, 1987; International Shipments: October 1, 1987.

ADDRESS: Comments on this issue must be received by June 19, 1987, and may be addressed to: Headquarters, Military Traffic Management Command, ATTN: MT-PPC, Room 408, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Ms. Eunice Anderson at (202) 765-2385 or Ms. Janet Phillips at (202) 756-1190.

SUPPLEMENTARY INFORMATION: This change eliminates the possibility of a higher cost carrier being used as a result of storage in transit at a different location. The current application of rates, based on the service member's residence or storage warehouse location resulted, in several cases, in excessive costs to the Government and an off-set action to the carrier. The charges will apply as follows:

(a) Domestic—Mileage will apply from the original point to the destination residence or storage warehouse, as applicable. The applicable line haul rate will be the percentage filed to the location shown in block 18 of the PPGBL.

(b) International—The single factor rate from the origin rate area to the destination rate area, as shown in block 18 of the PPGBL will apply for both household goods and unaccompanied baggage.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 87-11571 Filed 5-20-87; 8:45 am]

BILLING CODE 3710-08-M

Defense Logistics Agency

Privacy Act of 1974; Amendment of an Existing Computer Matching Program Between Department of Defense and U.S. Postal Service

AGENCY: Defense Manpower Data Center (DMDC), Defense Logistics Agency, Department of Defense.

ACTION: This action constitutes public notice for comment on a proposed amendment to an existing ongoing computer matching program between the Department of Defense (DoD) and the U.S. Postal Service (USPS).

SUMMARY: On March 29, 1985 at 50 FR 12606, the DoD gave public notice of a continuing Computer Matching Program between DoD and USPS. This matching program currently consisting of two specific programs: (1) To identify those Postal Service employees in the Ready Reserve so as to allow the USPS to determine if any such reservist would be critical to the USPS effort in time of national emergency and should not be retained in the Ready Reserve; and (2) to

identify and locate Postal Service employees indebted to the Department of Defense. This computer matching program is now being amended to add another additional continuing matching program between DoD and USPS. The new third matching program will match USPS employee records with the DoD military retired pay records to determine if their Postal Service salary makes them subject to restrictions on earnings imposed by the Dual Compensation Act. The purpose of this document is to provide information for public comment concerning the DoD proposal to amend the existing computer matching program between the DoD and USPS by adding a new third continuing matching program mentioned above. The amended matching report is set forth below.

DATE: The proposed action will be effective, without further notice on June 22, 1987, unless comments are received which would result in a contrary determination.

ADDRESS: Send written comments to Mr. Stewart Reiman, Defense Manpower Data Center, Suite 200, 550 Camino El Estero, Monterey, CA 93940–3231. Telephone: (408) 646–2951; Autovon: 878–2951.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, Room 205, 400 Army Navy Drive, Arlington, VA 22202. Telephone: (202) 694–3027; Autovon: 224–3027.

SUPPLEMENTARY INFORMATION: Set forth below is an amended matching report containing the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Matching Programs, dated May 11, 1982, issued by the Office of Management and Budget and published in the **Federal Register** at 47 FR 21656, May 19, 1982. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget on May 13, 1987, pursuant to Appendix I of OMB Circular No. A–130–"Federal Agency Responsibilities of Maintaining Records About Individuals" dated December 12, 1985 and published in the **Federal Register** at 50 FR 52730 on December 24, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 18, 1987.

Reporting of a Continuing Computer Matching Program: The Department of Defense and the U.S. Postal Service.

a. *Authority:* 5 U.S.C. 552a; Title 10 U.S.C. Section 136 and Section 271; Debt Collection Act of 1982 (Pub. L. 97–365); Executive Order 11190; Dual Compensation Act (Pub. L. 88–448) codified as amended at 5 U.S.C. 5532.

b. *Programs description:* Under written agreements, the Department of Defense as the matching agency will receive, upon request on a periodic basis, a magnetic tape from the U.S. Postal Service, the source agency, listing the names, home addresses, Social Security Account Numbers, and salaries of current, or former U.S. Postal Service employees for the purpose of the following computer matching programs:

(1) To identify and locate those U.S. Postal Service members who are indebted to the United States under programs administered by the Department of Defense pursuant to the Debt Collection Act of 1982. The records provided by U.S. Postal Service will be matched with the Department of Defense debtor records and the "hits" will be referred to the Postal Service which will provide the home and work address of each debtor to the Department of Defense. These records will be used to contact the debtor to request payment of the debt.

(2) To identify those Postal Service employees who are Ready Reservists for the purposes of updating the Department of Defense's listings of Ready Reservists and reporting reserve status information under E.O. 11190 to the Postal Service and Congress. The Postal Service will be furnished the "hits" so as to allow that agency to determine if any identified employee would be critical to the U.S. Postal Service effort in time of national emergency and should not be retained in the Ready Reserve.

(3) To match records of U.S. Postal Service employees, or former employees, with the retired military personnel records to determine if their Postal Service salary makes them subject to restrictions on earnings imposed by the Dual Compensation Act (5 U.S.C. 5532). If the individual "hits" are subject to a pay cap or dual compensation offset from their retired military pay, the records will be referred to the appropriate military service finance center for an offset determination.

c. *Records to be matched:* (1) Department of Defense System of Records.

The Department of Defense system of records to be used in this match is identified as S322.10 DLA–LZ, entitled: Defense Manpower Data Center Data Base. This record system notice can be located in the **Federal Register** at 51 FR 30104, August 22, 1986.

No amendment to this notice is required. The disclosure of information from this system of records, for the purpose of the matching program, is permitted by the existing routine uses.

(2) U.S. Postal Service System of Records.

The U.S. Postal Service system of records to be used in this match is identified as USPS 050.020, entitled: Finance Records-Payroll System. This records system can be located in the **Federal Register** at 52 FR 2777, January 26, 1987. No amendment to this notice is required and the routine uses, paragraph 30, 31 and 33, permit the disclosure for these matches.

d. *Period of the match:* The initial matching will begin when this notice becomes effective as set forth under "*DATE*" in the preamble of this notice. All three matches will be a continuing program.

e. *Security safeguards:* Tapes containing personal data are stored in a secure computer data processing facility at the W.R. Church Data Processing Center, Naval Postgraduate School, Monterey, California. Access to the tapes is by authorized personnel only. The data will be used only for the purposes stated above and data on nonmatching records will not be used for any purpose. All matching records (hits) will be examined further for accuracy and any action taken will conform to all applicable due process standards.

f. *Retention and disposition of records:* The records furnished by the U.S. Postal Service are only loaned to the Department of Defense and, while in the temporary custody, and release of information from the files will be made in accordance with established procedures and approval of the U.S. Postal Service. The Postal Service may either request return of the data furnished or direct its destruction at any time. Any records on individuals of interest to the Department of Defense will be collected and maintained in appropriate Department of Defense systems of records subject to the Privacy Act of 1974, as amended, and may be disseminated or disclosed under established procedures only for a lawful purpose. Likewise, any individual "hits" furnished to U.S. Postal Service, the source agency, will be collected and maintained in appropriate U.S. Postal Service systems of records subject to the Privacy Act of 1974, as amended, and may be disseminated or disclosed under established procedures only for a lawful purpose and will conform to all applicable due process standards. Upon completion of the comparison process, the Department of Defense will destroy or return the uncopied computer tape to

the Postal Service as directed by that agency.

[FR Doc. 87-11680 Filed 5-20-87; 8:45am]
BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplement to the final Environmental Impact Statement (FEIS) for the Metro Atlanta Area Water Resource Study (MAAWRS)

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft supplement to the final environmental impact statement (FEIS) for the Metro Atlanta area water resource study (MAAWRS)

SUMMARY: 1. The proposed action consists of the construction of a reregulation dam on the Chattahoochee River and the results of environmental studies conducted subsequent to the FEIS. The reregulation dam was identified as the recommended plan in the MAAWRS and is proposed to be constructed 6.3 miles below Buford Dam on the Chattahoochee River. Selection of the reregulation dam as the recommended plan was contingent upon additional environmental and engineering studies; the results of which will be presented in the Draft Supplement to the FEIS for the MAAWRS. The proposed project will meet future water supply for the Metropolitan Atlanta area.

2. Reasonable alternatives: Plan B, reallocation of storage, from the MAAWRS is retained as an alternative to construction of the reregulation dam, Plan A. Also, offstream storage, while not an economically viable alternative is carried through as representing a base condition.

3. a. This Draft Supplement is an extension of the MAAWRS which included an extensive public involvement program.

b. At the recommendation of the MAAWRS Executive Group, additional studies were conducted to better assess the environmental effects of the reregulation dam.

The additional studies are: (1) An instream flow study, (2) a math model water quality study, (3) zoological and botanical studies, and (4) recreation studies. Also included in the Draft Supplement is a draft coordination act report from the U.S. Fish and Wildlife Service with mitigation recommendations.

The Draft Supplement presents the results of these studies and compares the effects of the reregulation dam to alternative Plan B, reallocation of storage.

4. No scoping meetings will be held since the MAAWRS had extensive public involvement and participation. The Draft Supplement presents data called for by this extensive public participation.

5. The Draft Supplement to the FEIS should be available in the fall of 1987.

6. Questions about the proposed action can be answered by calling Mr. Tom Yourk at (912) 944-5793 or FTS 248-5793, or writing:

U.S. Army Engineer District, Savannah, ATTN: SASPD-EI/Mr. Tom Yourk, P.O. Box 889, Savannah, GA 31402-0889.

Stanley G. Genega,

Colonel, Corps of Engineers Commanding.

[FR Doc. 87-11621 Filed 5-20-87; 8:45 am]
BILLING CODE 3710-HP-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Navy Training Task Force will meet June 2-3 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting will include an examination of Navy training to assess how best to organize and manage training to accommodate future requirements, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee; 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: May 15, 1987.

Harold L. Stoller,

Commander JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 87-11609 Filed 5-20-87; 8:45 am]
BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Constrained Resources Task Force will meet June 18-19, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's approaches to maritime operations and readiness in the management of resources, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret is the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated May 15, 1987.

Harold L. Stoller,

Commander, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 87-11610 Filed 5-20-87; 8:45 am]
BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Outer ASW Battle will meet on June 18 and 19, 1987. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:30 a.m. and terminate at 5:00 p.m. on June 18 and 19,

1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to compare the elements of the Outer ASW Battle with the elements of the Outer Air Battle and determine if platforms and sensors can be coordinated to provide information to ASW forces; review and address command, control and communication aspects; review information received from sensor systems, and assess efforts in defensive systems. The agenda will include technical briefings and discussions related to the Outer Air Battle Study, sensor correlation and networking, intelligence support and Soviet concept of operations. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: May 15, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 87-11611 Filed 5-20-87; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Outer ASW Battle will meet on June 4 and 5, 1987. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 9:30 a.m. and terminate at 5:00 p.m. on June 4; and commence at 9:30 a.m. and terminate at 4:30 p.m. on June 5, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to compare the elements of the Outer ASW Battle with the elements of the Outer Air Battle and determine if platforms and sensors can be coordinated to provide information to ASW forces; review and address command, control and communications aspects; review information received from sensor systems, and assess efforts in defensive systems. The agenda will include technical briefings and discussions related to the Outer Air Battle Study, sensor correlation and networking, intelligence support and Soviet concept of operations. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: May 15, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U. S. Navy Federal Register Liaison Officer.

[FR Doc. 87-11612 Filed 5-20-87; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committe Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on U.S. Marine Corps Command and Control Systems Interoperability will meet on June 3 and 4, 1987, at the Marine Corps Development and Education Command, Quantico, Virginia. The meeting will commence at 9:00 a.m. and terminate at 3:30 p.m. on June 3; and commence at 9:00 a.m. and terminate at 3:00 p.m. on June 4, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review interservice command and control systems requirements for naval forces in the near and mid-term, and identify future communications and command and control systems architecture features with a view toward improving interoperability. The agenda will include executive sessions to discuss technical briefings received to date which addressed development programs and interoperability procedures, and begin preparation of a final report. These discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably interwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: May 15, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 87-11613 Filed 5-20-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER83-297-000]

Arkansas Power & Light Co.; Filing

May 14, 1987.

Take notice that on March 11, 1987, Arkansas Power & Light Company (AP&L) tendered for filing redetermined formula rates, revenue comparisons, and supporting workpapers for the Cities of Campbell and Thayer, Missouri.

AP&L asks that the updated rates supersede those effective on March 1, 1986, and that they become effective for service on and after March 1, 1987, subject to refund in accordance with the provisions of the Power Coordination, Interchange and Transmission Service Agreement.

Any person desiring to be heard or to protest this 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 Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 21, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this motion are on file with the Commission are are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-11595 Filed 5-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER82-705-000, ER83-230-000]

Arkansas Power & Light Co.; Filing

May 14, 1987.

Take notice that on March 11, 1987, Arkansas Power & Light Company (AP&L) tendered for filing redetermined formula rates, revenue comparisons, and supporting workpapers for the Cities of Conway, West Memphis, Osceola, and Jonesboro, and the Arkansas Electric Cooperative Corporation.

AP&L asks that the updated rates supersede those effective on March 1, 1986, and that they become effective for service on and after March 1, 1987, subject to refund in accordance with the provisions of the Power Coordination, Interchange and Transmission Service Agreements.

Any person desiring to be heard or to protest this 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 Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 21, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this motion are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-11596 Filed 5-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-37-000]

California Sportfishing Protection Alliance v. Oroville-Wyandotte Irrigation District; Complaint

May 18, 1987.

Take notice that on April 10, 1987, the California Sportfishing Protection Alliance (Alliance) filed with the Commission pursuant to § 385.206 of the Commission's regulations (Rule 206) a complaint (Complaint) against Oroville-Wyandotte Irrigation District (OWID). The Alliance filed a further pleading entitled "Complaint and Further Comments of [the Alliance] Concerning the Commission's Order of March 30, 1987," (Comments) on April 27, 1987. OWID is the licensee for the South Fork hydroelectric project, FERC Project No. 2088, located on the South Fork Feather River and other streams in Butte, Plumas, Sierra and Yuba counties, California.

In its Complaint, the Alliance alleges that OWID has violated provisions of the license for Project No. 2088 that concern the Lost Creek Dam. The Alliance states that Article 58 of the license for Project No. 2088 requires OWID to maintain an interim continuous minimum streamflow from the Lost Creek Dam of 1 cubic feet per second (cfs) or the inflow of Lost Creek Reservoir, whichever is less, for the purpose of protecting fish and wildlife resources. In addition, according to the Alliance, Article 57 of the license requires OWID to conduct a study of the minimum flow releases needed at the Lost Creek Dam and to report the results of the study to the Commission along with recommendations for approval of a permanent minimum flow release from the dam.

The Alliance further states in its Complaint that OWID failed to meet its minimum flow requirement at Lost Creek Dam for a period of 69 days in water year (WY) 1981; 24 days in WY 1982; 31 days in WY 1982; and 101 days in WY 1984. The Alliance also states that the Commission has failed to order a permanent increased flow at Lost Creek despite recommendations to do so by the California Department of Fish and Game (CDFG) and the U.S. Forest Service (FS), resulting significant degradation of the fishery resources of Lost Creek. In particular, the Alliance alleges that prior to project construction, Lost Creek had significant populations of rainbow and brown trout which have been degraded due to high water temperatures and low flows.

The Alliance requests that the Commission (1) immediately order minimum streamflow requirements for Lost Creek as recommended by CDFG and FS in 1982; (2) investigate non-compliance of the minimum flow requirement at Lost Creek and take appropriate enforcement actions in accordance with the Electric Consumers Protection Act (ECPA); and (3) investigate its Office of Hydropower Licensing and determine the reasons why permanent minimum flow requirements were not recommended to the Commission by its staff for Lost Creek.

In its Comments, the Alliance states that on March 30, 1987, the Commission ordered additional mandatory interim streamflow requirements and an additional fishery study on Lost Creek to determine the permanent minimum streamflow requirements. According to the Alliance, the Commission ordered a minimum streamflow release from Lost Creek of 5 cfs from April 1 to October 31, and 3 cfs from November 1 to March 31 annually, even though both CDFG and FS recommended a release of 10 cfs from November 1 through July 15; 5 cfs from July 16 through September 30; and 3 cfs from October 1 through October 31 annually.

In its Comments, the Alliance further requests that the Commission (1) immediately order interim minimum streamflow requirements for Lost Creek as recommended by FS; (2) investigate OWID's non-compliance and take appropriate enforcement actions in accordance with ECPA; (3) impose penalties for each day of non-compliance with the Commission's March 30, 1987, order; (4) require OWID to submit daily gauging records below Lost Creek Dam beginning with April, 1987; and (5) require OWID to answer the Complaint filed by the Alliance.

On May 5, 1987, OWID filed with the Commission an answer to the Alliance's Complaint. In addition to alleging procedural deficiencies in the Complaint, in its answer, OWID denies that it was required to maintain a mandatory interim continuous streamflow from Lost Creek of 1 cfs at all times, denies that there was a significant population of rainbow and brown trout prior to project construction, denies that it was not in compliance with Article 58 of its license, states that the gauge below Lost Creek Dam is grossly unreliable and hence that the USGS gauging records for Lost Creek Reservoir are inaccurate, contends that the Complaint should be rejected as procedurally deficient, and moves that the requested relief be denied and that

the Commission order sanctions against the Alliance for failure to comply with the Commission's rules and regulations.

Any person desiring to protest or to be heard on this Complaint should file a protest or motion to intervene in accordance with Rules 211 or 214, respectively, of the commission's Rules of Practice and Procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Motions to intervene or protests should be filed not later than 30 days following publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the Complaint, Comments and answer filed in this proceeding are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-11682 Filed 5-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1235-000]

City of Radford, VA; Issuance of Annual License

May 19, 1987.

On October 3, 1986, the City of Radford, Virginia, licensee for the Radford Municipal Power Plant Project No. 1235, filed an application for a new license pursuant to the Federal Power Act and the Commission's regulations thereunder. Project No. 1235 is located on the Little River in Montgomery and Pulaski Counties, Virginia.

The license for Project No. 1235 was issued for a period ending December 7, 1983. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to the City of Radford, Virginia.

Take notice that the project is being operated and maintained under an annual license which is effective until December 7, 1987, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 1235, subject to the terms and conditions of the original license.

Take further notice that if issuance of a new license does not take place on or before December 7, 1987, an annual license will be issued each year thereafter, effective December 8 of each year, until such time as a new license is issued, without further notice being given by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-11683 Filed 5-20-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-426-000]

Southern California Edison Co.; Filing

May 18, 1987.

Take notice that, on May 8, 1987, Southern California Edison Company ("Edison") tendered for filing, as an initial rate schedule, the following Agreement, which has been executed by Edison and the City of Riverside, California ("Riverside"):

Edison-Riverside, Desert Firm Transmission Service Agreement

Under the terms and conditions of the Agreement, Edison will make available to Riverside firm transmission service for its purchases of nonintegrated capacity and energy from Desert Generation and Transmission Cooperative, Inc. ("Desert"); to the Point of Delivery at the Riverside City Limits, Riverside, California.

The Agreement is proposed to become effective when executed by the Parties and accepted for filing by the Commission (without changes unacceptable to either party); and as such, Edison requests, to the extent necessary, waiver of notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Riverside, California.

Any person desiring to be heard or to present this application 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 Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 26, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-11684 Filed 5-20-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140082; FRL-3204-7]

Confidential Business Information Access by the Chemical Abstracts Service

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Chemical Abstracts Service (CAS) of Columbus, Ohio for access to information which has been submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Inventory of Chemical Substances, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA.

Under contract no. 68-01-7380, CAS, 2540 Olentangy River Road, Columbus, Ohio will assist the Ofice of Toxic Substances' Information Management Division by providing technical assistance in developing and operating the TSCA Chemical Substances Inventory. Specifically, CAS will assist the Office of Toxic Substances' Information Management Division in processing Inventory reports; in determining whether substances described in Premanufacture Notifications, Bona Fide submissions, Test Market Exemption Applications, and Ploymer and Low Volume

Exemption submissions are on the Inventory; responding to inquiries from EPA; and operating the Master Inventory File.

In accordance with 40 CFR 2.306(j) EPA has determined that CAS will require access to CBI submitted to EPA under TSCA to develop and operate successfully the TSCA Chemical Substances Inventory. Authorization for access by CAS to TSCA CBI for similar purposes under contract no. 68–01–6814 was previously announced in the **Federal Register** of February 15, 1984 (49 FR 5830). Under contract no. 68–01–7380, CAS personnel will require access to CBI data submitted to EPA under sections 5 and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 5 and 8 of TSCA that EPA may provide CAS access to these CBI materials at CAS facilities on a need-to-know basis. All access to TSCA CBI under this contract will take place at CAS's Columbus, Ohio site. Upon completing review of the CBI materials, CAS will return all transferred materials to EPA. Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1987.

CAS has been authorized for access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved the CAS security plan, has performed the required inspection of its facilities, and has found them to be in compliance with the requirements of the manual. CAS personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: May 12, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87–11648 Filed 5–20–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 87–124]

Request for Comments on Assisting Hearing Impaired and Other Disabled People in Obtaining Reasonable Access to Telecommunications Services

The Commission is seeking information concerning the telecommunications needs of the deaf and hearing impaired, so it can examine in detail the effectiveness of its rules for providing the disabled reasonable access to telecommunications services.

On December 1, 1983, the FCC adopted rules to improve access to telecommunications services and equipment by hearing impaired and other disabled people. At an informal meeting on telecommunications needs of the hearing impaired and other disabled people sponsored by the Common Carrier Bureau on December 5, 1986, some contended that additional steps needed to be taken.

Several options have been suggested by those who claim the hearing impaired do not have adequate access to telephone service. One option would required all telephones manufactured after a certain date to be hearing-aid compatible. This approach would not require the removal of existing non-compatible telephones or modification. Comments are requested on the costs of modifying non-hearing-aid compatible telephone manufacturing processes to make them hearing-aid compatible. Also, commenters are requested to provide data on the percentage of telephones that are currently hearing-aid compatible, as well as information about future trends.

Additionally, information is requested on the (1) total number of hearing aid users; (2) number of hearing aids equipped with telecoils (a built-in telephone pickup); (3) number of users requiring the use of hearing aids equipped with telecoils; (4) number of "in-the-ear" units equipped with telecoils; and (5) number of users employing the "in-the-ear" model.

Other issues for consideration include the impact of technological advances in hearing aids and telephone designs. Comments are requested on the future need for telecoil hearing-aid compatible telephones and the impact of imposing current telephone hearing-aid compatibility technology on future telephone system designs. Also, what are the special requirements, if any, of hearing impaired persons who use non-telecoil equipped hearing aids, and would a universal compatibility requirement impede technological developments in terminal equipment or the telephone network?

Another option would be the creation of a committe consisting of representatives from the hearing aid and telephone industries and from hearing impaired and other disabled groups. Comments are requested on the merits of such a committee and whether it should be coordinated under the auspices of some existing organization, such as the Exchange Carriers Association's T–1 Committee.

Action by the Commission April 24, 1987, by Notice of Inquiry (FCC 87–150). Commissioners Patrick (Chairman), Quello, Dawson and Dennis.

News Media contact: Audrey Spivack at (202) 632–5050. Common Carrier Bureau contact: Robert James at (202) 634–1831.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–11515 Filed 5–20–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under OMB Review

May 15, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and rquirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B–2223 between 8:45

a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below:

Federal Reserve Board Clearance Officer—Nancy Steele—Divisions of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal to approve under OMB delegated authority the discontinuance of the following reports:

1. *Report title:* Monthly Survey of Commercial and Industial Loan Commitments Agency form number: FR 2039
OMB Docket number: 7100–0065
Frequency: monthly
Reporters: Selected large U.S. commercial banks
Annual reporting hours: 7906 hours
Small businesses are not affected
General description of the report:

This survey provides information on the volume and composition of loan commitments at selected large U.S. commercial banks, used in analysis of banking developments and credit market conditions. The report is proposed to be discontinued in view of financial market changes that reduce the need for this information.

This report is voluntary and authorized by law [12 U.S.C. 248(a)]. Individual respondent data are given confidential treatment [5 U.S.C. 552(b)(4) and (8)].

2. *Report title:* Monthly Report on the Maturity Distribution of Negotiable Certificates of Deposit of $100,000 or More
Agency form number: FR 2078
OMB Docket number: OMB No. 7100–0179
Frequency: monthly
Reporters: certain large commercial banks
Annual reporting hours: 456
Small businesses are not affected
General description of the report:

This report provides data used to monitor bank funding strategy and liquidity pressure. It is proposed to be discontinued in view of changes in bank funding strategy which reduce the need for this information.

This report is voluntary and authorized by law [12 U.S.C. 225(a) and 248(a)]. Individual respondent data are given confidential treatment [5 U.S.C. 552(b)(4) and (8)].

Board of Governors of the Federal Reserve System, May 15, 1987

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–11602 Filed 5–20–87; 8:45 am]

BILLING CODE 6210–01–M

Acquisitions of Shares of Banks or Bank Holding Companies; John C. Jennings et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 5, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *John C. Jennings,* Gainesville, Florida, and Asa G. Candler, Jacksonville, Florida; to acquire 23.77 percent of the voting shares of First City Bancorp, Inc., Gainsville, Florida, and thereby indirectly acquire First City Bank Gainesville, Florida.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Davis S. and Karen G. Woronoff,* Windsor, Colorado; to acquire 50 percent of the voting shares of Platteville Capital Corp., Platteville, Colorado, and thereby indirectly acquire Platteville State Bank, Platteville, Colorado.

C. **Federal Reserve Bank of Dallas** (W. Athur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *James Aubrey Cardwell,* El Paso, Texas; to acquire 35.10 percent of the voting shares of Continental National Bancshares, El Paso, Texas, and thereby indirectly acquire Continental National Bank, El Paso, Texas.

Board of Governors of the Federal Reserve System, May 15, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–11603 Filed 5–20–87; 8:45 am]

BILLING CODE 6210–01–M

Application to Engage de Novo in Permissible Nonbanking Activities; Central Wisconsin Bankshares, Inc.

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated

or the offices of the Board of Governors not later than June 11, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Central Wisconsin Bankshares, Inc.*, Wausau, Wisconsin; to engage de novo through its subsidiary, CWB Mortgage, Inc., Wausau, Wisconsin, in mortgage banking activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 15, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-11605 Filed 5-20-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; Hometown Bancorporation, Inc.

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 12, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Hometown Bancorporation, Inc.*, Darien, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Darien, Darien, Connecticut.

Board of Governors of the Federal Reserve System, May 15, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-11604 Filed 5-20-87; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[Wildlife Order 162; 4-J-FL-758A]

Forfeited Property, Golden Gate Road, Osceola County, FL; Conveyance of Property

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By deed from the General Services Administration dated December 12, 1986, the property, consisting of 2,021 acres of unimproved land, known as Forfeited Property, Golden Gate Road, Osceola County, Florida (4-J-FL-758A), has been transferred to the State of Florida, Florida Game and Fresh Water Fish Commission.

2. The above described property was conveyed for wildlife conservation in accordance with the provisions of section 1 of said Pub. L. 80-537 (16 U.S.C. 667b), as amended by Pub. L. 92-432.

Dated: May 8, 1987.

Earl E. Jones,

Commissioner, Federal Property Resources Service.

[FR Doc. 87-11626 Filed 5-20-87; 8:45 am]

BILLING CODE 6820-96-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. June 15 and 16, 8:30 a.m., Bldg. 1, Wilson Hall, third floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meetings and contact person. Open public hearing, June 15, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 10:30 a.m.; closed committee deliberations, 10:30 a.m. to 5 p.m.; closed committee deliberations, June 16, 8:30 a.m. to 4:30 p.m.; Jack Gertzog, Center for Drugs and Biologics (HFN-31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or threatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda-Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. On June 15, the committee will be briefed on current agency programs concerning vaccines and related biological products.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending license applications and status of investigational new drugs (IND's) in the Office of Biologics Research and Review. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Allergenic Products Advisory Committee

Date, time, and place. June 25, 8:30 a.m., Lister Hill Auditorium, National Library of Medicine, National Institutes of Health, Bethesda, MD; June 26, Rm. 115, Bldg. 29, Office of Biologics Research and Review, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, June 25, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4 p.m.; closed committee discussion , 4 p.m. to 5 p.m.; open committee discussion, June 26, 8:30 a.m. to 2:30 p.m.; closed committee discussion, 2:30 p.m. to 3:30 p.m.; Clay Sisk, Center for Drugs and Biologics (HFN-32), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational allergenic biological products administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease.

Agenda-Open public haring. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss the following: (1) Safety considerations for the aluminum component of alum-precipitated allergenic extracts, (2) license application from Allergy Laboratories of Ohio for polymerized short and giant ragweed pollen extracts, and (3) considerations on licensing and labeling of allergenic extract products which are compositionally different.

Closed committee discussion. The committee will review trade secret and/or confidential commercial information relevant to pending biological product license applications and IND's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Immunology Devices Panel

Date, time, and place. June 29 and 30, Rm. 503A–529A, Hubert H. Humphrey Bld., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, June 29, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; open committee discussion, June 30, 9 a.m. to 10 a.m.; closed presentation of data, 10 a.m. to 12 m.; closed committee deliberations, 1 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Srikrishna Vadlamudi, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

General function of the committee. The committee reveiws and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda-Open public hearing. Interested persons may present data, information, or views, orally or in wirting, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 15, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for a tumor marker test kit for the monitoring of cancer and a test kit for the detection of neural tube defects.

Closed presentation of data. Trade secret and/or confidential commercial information will be presented to the committee regarding the above premarket approval applications. This portion of the meeting will be closed to permit discussion of the information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information regarding the above premarket approval applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contract person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFW–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal

nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 13, 1987.

John A. Norris,

Acting Commissioner of Food and Drugs, Food and Drug Administration.

[FR Doc. 87–11600 Filed 5–20–87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86P-0404]

Canned Pacific Salmon Deviating From Identity Standard; Amendment of Temporary Marketing Permit; Kelley-Clarke, Inc.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit to market test canned skinless and boneless chunk salmon packed in water is being amended to increase the quantity of test product to be distributed and the area of distribution. This amendment will provide the permit holder with a broader base for the collection of data on consumer acceptance of the test product.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration 200 C Street SW., Washington, DC 20204, 202–485–0110.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to Kelley-Clarke, Inc., Seattle, WA 98124, to market test canned skinless and boneless chunk salmon packed in water to test consumer acceptance of the new style pack. The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Kelley-Clarke, Inc., was published in the **Federal Register** of November 17, 1986 (51 FR 41538).

Kelley-Clarke, Inc., is requesting that the permit be amended to (1) increase the quantity of test product to 108,000 cases containing twenty-four 6½-ounce cans each and (2) expand the area of distrubution to include Alaska and Hawaii. The company states that these changes are necessary in order to collect adequate data to complete the market test. Accordingly, FDA, under the provisions of 21 CFR 130.17(f), is amending the temporary permit to increase the quantity of test product to 108,000 cases and to include Alaska and Hawaii in the test market area.

Therefore, FDA is amending the permit to change the quantity of product to be market tested and the area of distribution. All other conditions and terms of this permit remain the same.

Dated: May 11, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–11597 Filed 5–20–87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86P-0485]

Canned Pacific Salmon Deviating From Identity Standard; Amendment of Temporary Marketing Permit; Peter Pan Seafoods, Inc.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit to market test canned skinless and boneless chunk salmon packed in water is being amended to increase the quantity of test product to be distributed and the area of distribution. This amendment will provide the permit holder with a broader base for the collection of data on consumer acceptance of the test product.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–485–0110.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to Peter Pan Seafoods, Inc., Seattle, WA 98121, to market test canned skinless and boneless chunk salmon packed in water to test consumer acceptance of the new style pack. The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Peter Pan Seafoods, Inc., was published in the **Federal Register** of January 8, 1987 (52 FR 705).

Peter Pan Seafoods, Inc., is requesting that the permit be amended to (1) increase the quantity of test product to 108,000 cases containing twenty-four 6½-ounce cans each and (2) expand the area of distribution to include Alaska and Hawaii. The company states that these changes are necessary in order to collect adequate data to complete the market test. Accordingly, FDA, under the provisions of 21 CFR 130.17(f), is amending the temporary permit to increase the quantity of test product to 108,000 cases and to include the State of

Alaska and Hawaii in the test market area.

Therefore, FDA is amending the permit to change the quantity of product to be market tested and the area of distribution. All other conditions and terms of this permit remain the same.

Dated: May 11, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-11598 Filed 5-20-87; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1987:

Name: Subcommittee on Physician Manpower of the Council on Graduate Medical Education
Time: June 29, 1987 8:00 a.m.-5:30 p.m.
Place: Stouffers Concourse Hotel, 2399 Jefferson Davis Highway, Crystal City, Virginia 22202

Purpose: The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and residents. It also is concerned with studies and recommendations regarding the number of undergraduate medical students as well as the need for improving physician manpower data.

The subcommittee will draft a chapter for the first report of the Council. Recommendations will likely concern the outlook for supply, appropriate federal policies and suggestions for voluntary action by hospitals, medical and osteopathic schools and accrediting bodies regarding physician supply, and shortages and excesses.

Agenda: Agenda items include: (1) Discussion of Physician Specialty Requirements Paper: Resolution and Recommendations to the Council on Short-term Options to Respond to Issue of Specialty-Specific Assessment of Balances, Shortages and Excesses; (2) Trends in General Surgery Supply and Issue of Use of Board Certifications Numbers in Supply-Requirements Assessments; (3) Trends in Primary Care Physician Supply, and Observations and Requirements; (4) Geographic Distribution Issues and Status: Trends and status in the Geographic Distribution of Physicians; (5) Areawide Health Education Center Program and Distribution Issues and Experiences; (6) the National Health Service Corps Program and Issues of Geographic Physician Manpower Distribution; (7) the Status of Minority Physicians in the Delivery of Health Care and (8) Physician Manpower Needs in the Military.

Anyone requiring information regarding the subject Subcommittee should contact Jerald Katzoff, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 30857 Telephone (302) 443-6364.

* * * * *

Name: Subcommittee on Foreign Medical Graduates of the Council on Graduate Medical Education
Time: June 19, 1987 8:30 a.m.-5:00 p.m.
Place: Stouffers Concourse Hotel, 2399 Jefferson Davis Highway, Crystal City, Virginia 22202

Purpose: The Subcommittee reviews and analyzes existing data and information on alien and U.S. foreign medical graduates in training and in practice regarding adequacy of existing data bases, effect of existing policies and procedures regarding distribution, service delivery and international relations.

The Subcommittee will draft a chapter for the first report of the Council. Recommendations will likely concern the appropriate Federal policies and efforts to be carried out voluntarily by hospitals, schools of medicine and osteopathy, licensing, certifying, and accrediting bodies with respect to issues relating to foreign medical graduates.

Agenda: Agenda items include Panel presentations on (1) Impact to services when residency programs are reduced or eliminated and (2) the Legal, moral or ethical implications regarding different treatment of medical graduates (i.e., U.S. medical school graduates and foreign medical school graduates).

Anyone requiring information regarding the subject Subcommittee should contact Magdalena Miranda, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 30857 Telephone (301) 443-6364.

* * * * *

Name: Subcommittee on Graduate Medical Education Programs and Financing of the Council on Graduate Medical Education
Time: June 29, 1987 8:30 a.m.-5:00 p.m.
Place: Stouffers Concourse Hotel, 2399 Jefferson Davis Highway, Crystal City, Virginia 22202

Purpose: The subcommittee identifies the issues and problems in current methods of financing and support. Assesses the implications of alternative financing policies on medical education programs, service delivery, cost containment, physician supply & distribution, and shortages and excesses of physicians.

Analyzes existing information and data on current and alternative medical education programs of hospitals, schools of medicine and osteopathy, and accrediting bodies; federal policies regarding medical education programs; and their impact on the supply and distribution of physicians.

The subcommittee will draft a chapter for the first report of the Council. Recommendations will likely concern the appropriate Federal policies and efforts to be carried out voluntarily by hospitals, schools of medicine and osteopathy and accrediting bodies with respect to medical education programs and financing.

Agenda: Agenda items include Discussions of (1) Private Payer Plans and Financing of GME; (2) Veterans Administration and Dept. of Defense Financing of GME; (3) Medical Center Financing of GME; (4) Financing of GME in Osteopathic Teaching Hospitals; (5) Overview and Future Directions of Faculty Practice Plans in GME; and (6) Medical Center Governance and Operations. The agenda is also scheduled to include a panel on Faculty Practice Plans and Discussion by the Subcommittee to establish principles and outline of chapter for the first report.

Anyone requiring information regarding the subject Subcommittee should contact F. Lawrence Clare, M.D., Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 30857 Telephone (301) 443-6364.

* * * * *

Name: Council on Graduate Medical Education—Plenary Session
Time: June 30, 1987 8:30 a.m.-4:30 p.m.
Place: Stouffers Concourse Hotel, 2399 Jefferson Davis Highway, Crystal City, Virginia 22202

Open for entire meeting.

Purpose: Provide advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and

Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: Agenda items include review of Council list of issues, presentations on "Health Policy agenda for the American People" and on "Physician Manpower Issues". Reports from the Administrator, Health Resources and Services Administration, update on legislative developments, and reports from the three subcommittees. A Public comment period is also included as part of the agenda.

Anyone requiring information regarding the subject Council should contact Mr. Paul Schwab, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 14–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2033.

Agenda Items are subject to change as priorities dictate.

Dated: May 15, 1987.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 87–11591 Filed 5–20–87; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Recombinant DNA Advisory Committee; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Recombinant DNA Advisory Committee, June 15, 1987, National Institutes of Health, Bethesda, Maryland, which was published in the **Federal Register** on March 11, 1987 (52 FR 7525).

The meeting was cancelled due to lack of agenda items and has been rescheduled on September 21, 1987.

Dated: May 15, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–11592 Filed 5–20–87; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Resources; National Advisory Research Resources Council; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Research Resources Council (NARRC), Division of Research Resources (DRR), June 4–5, 1987, 9 a.m., Wilson Hall, James A. Shannon Building, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892 which was published in the **Federal Register** on May 1, (52 FR 15991).

The meeting was to have been open to the public on June 5 from 9 a.m. to approximately 10:45 a.m. and closed from 10:45 a.m. until adjournment, but this has been changed.

The meeting now is scheduled to be closed to the public on June 5 from 8:30 a.m. to approximately 10:45 a.m. for review, discussion and evaluation of individual grant applications and open from 10:45 a.m. until adjournment.

Dated: May 15, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–11593 Filed 5–20–87; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Advisory Committees; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1987:

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: June 18–19, 1987, 8:30 a.m.

Place: Linden Hill Hotel, Sea Pines Room, 5400 Pooks Hill Road, Bethesda, Maryland.

Open June 18, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing to do analysis of data derived from experiments and demonstrations designed to test the cost-effectiveness and efficiency of particular methods of health services delivery and financing, for the research grants program administered by the National Center for Health Services Research and Health Care Technology Assessment.

Agenda: The open session of the meeting of June 18 from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Acting Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Acting Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. Hoke S. Glover, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

* * * * *

Name: Health Services Research Review Subcommittee.

Date and Time: June 11–12, 1987, 8:00 a.m.

Place: Holiday Inn—Crowne Plaza, Woodmont Room, 1750 Rockville Pike, Rockville, Maryland.

Open June 11, 8:00 a.m. to 9:00 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grants program administered by the National Center for Health Services Research Care Technology Assessment.

Agenda: The open session of the meeting of June 11 from 8:00 a.m. to 9:00 a.m. will be devoted to a business meeting covering administration and reports. There will also be a presentation by the Acting Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Acting

Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Anthony Pollitt, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

* * * * *

Name: Health Care Technology Study Section.

Date and Time: June 8-9, 1987, 8:30 a.m.

Place: Holiday Inn of Bethesda, Montgomery Room, 8120 Wisconsin Avenue, Bethesda, Maryland.

Open June 8, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications addressing the effects of health care technologies and procedures, including those in the area of information sciences, as well as those addressing the process of diffusion and adoption of new technologies and procedures.

Agenda: The open session from 8:30 a.m. to 9:30 a.m. on June 8 will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Acting Director, NCHSR. The closed sessions of the meeting will be devoted to review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Acting Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Agenda items are subject to change as priorities dictate.

Dated: May 8, 1987.

Samuel Lin,

Assistant Surgeon General, Acting Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 87-11651 Filed 5-20-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of the Rincon Band of Mission Indian Judgment Funds in Docket 80-A Before the United States Claims Court

May 12, 1987.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

EFFECTIVE DATE: This plan was effective on April 2, 1987.

FOR FURTHER INFORMATION CONTACT: Lynn Forcia, Tribal Services Specialist, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 32-SIB, 1951 Constitution Avenue NW., Washington, DC 20245.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973, (Pub. L. 93-134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on October 16, 1985, in satisfaction of the award granted to the Rincon Band of Mission Indians before the United States Claims Court in Docket 80-A. The plan for the use and distribution of the funds as recorded in the Congressional Record was submitted to Congress with a letter dated October 2, 1986 and was received by the Senate on October 9, 1986 and by the House of Representatives on January 6, 1987. The plan became effective on April 2, 1987 as provided by the 1973 Act, as amended by Pub. L. 97-458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

For the Use and Distribution of the Rincon Band of Mission Indians Judgment Funds in Docket 80-A Before the United States Claims Court

The funds apropriated October 16, 1985 in satisfaction of an award granted to the Rincon Band of Mission Indians in Docket 80-A, less attorney fees and litigation expenses, including all interest and investment income accrued, shall be used and distributed as herein provided.

Per Capita Aspect

Eighty (80) percent of the funds shall be distributed in the form of per capita payments, by the Secretary of the Interior, in sums as equal as possible, to all tribal members born on or prior to and living on the effective date of this plan.

Programing Aspect

Twenty (20) percent of the funds, and any amount remaining from the per capita payment provided above, shall be invested by the Secretary and utilized by the tribal governing body on a budgetary basis for programing purposes, subject to the approval of the Secretary. None of the programing funds shall be available for per capita or dividend payments.

General Provisions

The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR Part 4, Subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512.

None of the funds made available under this plan for programing or per capita distribution shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares or dividend payments in excess of $2,000, any Federal or federally assisted program.

Ronald L. Esquerra,

Acting Assistant Secretary; Indian Affairs.

[FR Doc. 87-11573 Filed 5-20-87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NV-930-07-4214-24; N-43266]

Partial Termination of Airport Lease Application Involving Lands in Clark County, NV

Notice is hereby given that a portion of the lands involved in airport lease application N-43266 as described below, have been withdrawn.

Mount Diablo Meridian, Nevada

T.13S. R.71E.,
Sec. 9, NE¼,
Sec. 10, Lots 5 and 6, W½NW¼.

The segregative effect of the airport lease application as it pertains to the above-described lands only, is hereby removed upon publication of this notice in the **Federal Register.**

Charles Frost,

Acting District Manager.

May 12, 1987.

[FE Doc. 87-11576 Filed 5-20-87; 8:45 am]

BILLING CODE 4310-HC-M

[ID-030-07-4410-08]

Terminology Change From Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC); Idaho Falls District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Designation change in the Draft Pocatello Resource Management Plan/Environmental Impact Statement.

To comply with 1623-Supplemental Program Guidance for Land Resources, the Proposed Research Natural Areas (RNA) identified in the Draft Pocatello Resource Management Plan/Environmental Impact Statement would carry a dual designation, Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC). This dual designation applies to the following proposed RNAs:

The designation of Cheatbeck Canyon, 100 acres, as a Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC). This proposed RNA/ACEC contains an excellent mixed stand of boxelder and bigtooth maple. These two maples, boxelder and bigtooth maple, occur naturally only in the Southeastern part of the state. The management objectives would be: (1) Close this area to ORV use, and (2) require No-Surface-Occupancy stipulations on leasable mineral activities and withdrawal from mining claim location.

The designation of Dairy Hollow, 45 acres, as a Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC). This tract was picked because of its good stand of Wyoming sagebrush and needle-and-thread grass habitat type. Only one other area, in another geomorphic province, has this habitat type, and on that one, the stand is too small to manage. In addition, the area contains interesting columns and bluffs of conglomerate capped with red sandstone. One ferruginous hawk nest with three young was located in the area. A rare plant, *Astragalus Spatulatus* (spoonleaf milkvetch), also occurs within the area proposed. The management objectives would be: (1) close the area to ORV use, (2) eliminate livestock grazing by fencing, and (3) require No-Surface-Occupancy stipulations on leasable mineral activities and withdrawal from mining claim location.

The designation of Formation Cave, 70 acres, as a Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC). This is an area of travertine terraces, that were once ponds, and broad, gently sloping outwash plains. The terraces maintain pristine stands of bitterbrush, Nevada bluegrass, and shrubby cinquefoil. Along the old stream channel and where the watertable is close to the surface, water birch is predominate. The management objectives would be: (1) Close the area to ORV use, and (2) require No-Surface-Occupancy stipulations on leasable milneral activities and withdrawal from mining claim location.

The designation of Oneida Narrows, 617 acres as a Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC). Oneida narrows contains a narrow band of boxelders along the Bear River with adjacent northwesterly and southeasterly facing slopes of mountain mohogany, bigtooth maple, Rocky Mountain juniper, and bluebunch wheatgrass communities. Small stands of aspen dot the slopes. Near vertical limestone cliffs containing grottos and caves provide a haven for a variety of birds and uniquely adapted plants. The area is quite undisturbed and diverse. The management objectives would be: (1) Close the area to ORV use, and (2) require No-Surface-Occupancy stipulation on leasable mineral activities and withdrawal from mining claim location.

The designation of Pine Gap, 232 acres, as a Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC). This very uniform area of calcareous soil near Pine Gap is covered with a community of black sagebrush and bluebunch wheatgrass. It shows signs of past grazing, yet is in very good condition. Its uniformity is an outstanding feature. It also contains a rare plant, *Astragalus Spatulatus* (spoonleaf milkvetch). The management objectives would be: (1) Close the area to ORV use, (2) require No-Surface-Occupancy stipulations on leasable mineral activities and withdrawal from mining claim location, and (3) eliminate livestock grazing by fencing.

The designation of Robbers Roost Creek, 400 acres, as a Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC) Robbers Roost Creek provides an unrepresented sample of shrub communities in good condition. If accepted it would provide a very good undisturbed reference and study area. The management objectives would be: (1) Close the area to ORV use, and (2) require No-Surface-Occupancy stipulations on leasable mineral activities and withdrawal from mining claim location.

The designation of Travertine Park, 30 acres, as a Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC). The area considered is a small area of relatively undisturbed mixed-shrub vegetation, protected by the river on the north, by cliffs and rough talus. This mixed-shrub community is isolated and exhibits features not found elsewhere in Idaho. Management objectives for this area would be: (1) Close to ORV use, (2) require No-Surface-Occupancy stipulations on leasable mineral activities and withdrawal from mining claim location, and (3) eliminate livestock grazing by fencing.

The total geographical area considered for the seven described RNA/ACECs would equal 1,494 acres of BLM managed land in the Pocatello Resource Area. These lands have already been proposed as RNAs in the Draft Pocatello Resource Management Plan/Environmental Impact Statement (comment period ended April 30, 1987). We are reintroducing the above described areas for a 60 day public comment period as a result of the proposed additional ACEC designation (43CFR1610.7-2).

DATES: Written comments on dual designation (RNA/ACEC) should be submitted within 60 days of this notice.

ADDRESS: Written comments should be submitted to District Manager, Attn: RNA/ACEC, Bureau of Land Management, 940 Lincoln Rd., Idaho Falls, ID 83401; telephone: (208) 529-1020.

SUPPLEMENTAL INFORMATION: This notice only relates to those RNAs described in the Draft RMP/EIS being

proposed for dual designation. The Draft RMP/EIS is not reopened for comment.

Lloyd H. Ferguson,
District Manager.
May 13, 1987.

[FR Doc 87-11631 Filed 5-20-87; 8:45 am]
BILLING CODE 4310-GG-M

[OR-020-07-4212-08; GP7-164]

Intent to Amend Land Use Plans; Burns District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Opportunity for Public Comment—Notice of Intent to Amend the Andrews and Drewsey land use plans in the Burns District, Oregon.

SUMMARY: In accordance with 43 CFR 1601.3-1, notice is hereby given that the Bureau of Land Management, Burns District, Oregon intends to amend the Andrews and Drewsey land use plans regarding land tenure adjustments. The Plan Amendment includes the entire Andrews Planning Unit (1.6 million acres) and approximately 200,000 acres in the southern portion of the Drewsey Planning Unit. The subject area is located in southeastern Oregon, more specifically in the southern and southwestern portions of Harney and Malheur Counties, respectively.

The purpose of the Amendment is to specifically identify public land for retention, exchange, or other disposal (by sale or other authorities which transfer title out of public ownership), and generally, areas where acquisition of private land could enhance public land management.

The Amendment is needed to update the existing Andrews and Drewsey land use plans which do not adequately identify public lands for disposal nor the method of disposal. This is a requirement of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701).

FOR FURTHER INFORMATION CONTACT: Joshua L. Warburton, District Manager, Burns District Office, 74 South Alvord, Burns, Oregon 97720 (Telephone 503-573-5241).

SUPPLEMENTARY INFORMATION: Major issues involved in the Plan Amendment are the identification of those public lands which: (1) Are to be retained for multiple use management; (2) are uneconomical or difficult to manage, and could be disposed of through sale or other authorities; or (3) may be exchanged if certain resource criteria are met.

Disciplines to be represented on the interdisciplinary team preparing the Plan Amendment and Environmental Assessment (EA) are: wildlife, wild horses, recreation, wilderness, archaeology, watershed, minerals, lands and realty, range, threatened and endangered plants and animals, and land use planning.

More detailed information on planning criteria, issues and preliminary management alternatives is available at the Burns District Office and has also been mailed to known interested parties. The comment period on preliminary issues and planning criteria for the Plan Amendment and associated EA will close June 22, 1987. Other public participation activities will include a 45-day review of the Proposed Plan Amendment/EA and an open house or public meeting to receive comments and answer questions. Dates, times and location will be announced through local media and mailed to interested parties. Planning documents are available for inspection at the Burns District Office during normal working hours.

Dated: May 7, 1987.

Mark E. Johnson,
Acting Associate District Manager.
[FR Doc. 87-11627 Filed 5-20-87; 8:45 am]
BILLING CODE 4310-33-M

Intent To Amend the Clear Lake Management Framework Plan; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notices of intent and availability.

SUMMARY: Pursuant to 43 CFR 1601.2(c) notice is hereby given that the Clear Lake Resource Area, Ukiah District, California is amending the Clear Lake Management Framework Plan (MFP); pursuant to 43 CFR 1610.4-2 notice is hereby given that proposed planning criteria for the amendment are available for public review and comment.

DATE: Comments on the intent to amend and the proposed planning criteria will be accepted for thirty (30) days from the date of publication of these notices in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gretchen Smyth, Clear Lake Resource Area Manager, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482. Telephone (707) 462-3873.

SUPPLEMENTARY INFORMATION: The intent of this amendment is to add additional lands to the Cache Creek Area of Critical Environmental Concern (ACEC). This ACEC was originally designed in 1984 in the Clear Lake MFP and includes all federal lands within a mile-wide corridor centered on Cache Creek in T. 12N, R. 4W; T. 12N, R. 5W; T. 13W; and T. 13N, R. 6W, Mount Diablo Meridian.

The management plan for the ACEC and the Cache Creek Tule Elk Wildlife Habitat Management Plan (HMP) both recognize use of critical wildlife habitat here by the endangered Southern Bald Eagle and the state-protected Tule Elk. For this reason the Bureau recently acquired 1510 acres of private land within the river corridor and has plans for future acquisitions of additional critical habitat here. This amendment clarifies the Bureau's intent to include within the ACEC the recent and all future acquisitions within the legal descriptions above. Also added to the ACEC are those federal lands within the mile-wide river corridor found in T. 12N., R. 6W; T. 13N., R. 4W.; and those federal lands found in T. 13N, R. 6W, Sections 8, 9, and 10 located within a mile-wide corridor of the *North Fork* from the State Highway 20 bridge downstream to the confluence with Cache Creek, as well as any future acquisitions by the Bureau in this stretch of the North Fork.

The approved HMP and the draft ACEC plans both are detailed management plans for the area and contain detailed planning criteria. This planning amendment will not change the actions specified in these plans; only the formal designation of additional lands as a part of the ACEC is at issue. Opportunities for public input and comment will be announced through the media, mailings, and personal contacts.

Dated: May 15, 1987.

Alfred W. Wright,
District Manager.
[FR Doc. 87-11577 Filed 5-20-87; 8:45 am]
BILLING CODE 4310-40-M

[NM-010-07-4332-10]

District Advisory Council Meeting; Albuquerque District, NM

AGENCY: Bureau of Land Management.

ACTION: Notice of District Advisory Council Meeting.

SUMMARY: The Bureau of Land Management's Albuquerque District Advisory Concil will meet on Monday, June 15, 1987, at 10 a.m., in the BLM District Office Building located at 435 Montano N.E. in Albuquerque, New Mexico.

The Council will address the following issues:

1. A review of Activity Plans, currently being drafted, to manage recently designated Areas of Critical Environmental Concern (ACECs) in the RIO Puerco Resource Area.

2. Results of Public Participation efforts in the Taos and Farmington Resource Management Planning efforts.

3. Current efforts in the Albuquerque District involving Volunteers.

4. Reports for Council Subcommittees:

—Taos RMP Land Disposal Issue
—De-Na-Zin Wilderness Management Plan
—Rio Puerco ORV Implentation.

5. Program Updates:

—El Malpais Legislation
—Rio Puerco Legislation
—Statewide Wilderness Study Process.

Time will be provided for public comments during the appropriate agenda items. The Albuquerque District Advisory Council is managed in accordance with the Federal Land Policy and Management Act of 1979. Minutes of the meeting will be made available for review within 30 days following the meeting. For additional information, contact Alan Hoffmeister, Public Affairs Specialist, 435 Montano N.E., Albuquerque, New Mexico 87107, (505) 766–4504.

Richard Fagan,

Acting District Manager.

[FR Doc. 87–11632 Filed 5–20–87; 8:45 am]

BILLING CODE 4310-FB-M

[NM–060–07–4341–02]

Roswell District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Roswell District Advisory Council meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Roswell District Advisory Council.

DATE: Wednesday, June 24, 1987, beginning at 10 a.m. A public comment period will be held following the last agenda item.

Location: BLM Roswell District Office, 1717 West Second St., Roswell, NM 88201.

FOR FURTHER INFORMATION CONTACT: David L. Mari, Associate District Manager, or Terry Keim, Acting Public Affairs Specialist, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201, (505) 622–9042.

SUPPLEMENTARY INFORMATION: The proposed agenda will include: (1) Roads Policy Status; (2) Minerals Material Appraisal; (3) Painting NTL; (4) RMP Status; (5) FOGRMA Regulations; (6) Sikes Act Program. The meeting is open to the public. Interested persons may make oral statements to the Council during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the Associate District Manager by June 15, 1987. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours within 30 days following the meeting. Copies will be available for the cost of duplication.

Francis R. Cherry, Jr.,

District Manager.

[FR Doc. 87–11578 Filed 5–20–87; 8:45 am]

BILLING CODE 4310-FB-M

[AA–48785–AP]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48785–AP has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 21 S., R. 10 E.,
Sec. 14, S½ NE¼.
(80 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from September 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48785–AP as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective September 1, 1986, subject to the terms and conditions cited above.

Dated: May 14, 1987.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87–11633 Filed 5–20–87; 8:45 am]

BILLING CODE 4310-JA-M

[AZ–940–07–4212–14; A–20295 thru A–20300]

Sale of Public Land; Arizona

May 13, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of public land.

SUMMARY: Notice is hereby given that six parcels of public land near Oatman, Arizona were sold by direct sale as follows:

Gila and Salt River Meridian, Arizona

T. 19 N., R. 20 W.,
Sec. 23.
Donald Craig Smith and Christine Forster Warren
Lot 1, containing 0.62 acre
Ruth Kunkel
Lots 12 and 13, containing 2.13 acre
Gable P. and Angela Boudreaux
Lot 14, containing 0.71 acre
Anne E. Smith
Lot 16, containing 0.60 acre
Patricia Loerch
Lot 17, containing 0.90 acre
Jimmy M. King and Carol L. Stetser
Lot 12, containing 0.41 acre.

The purpose of this notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–11634 Filed 5–20–87; 8:45 am]

BILLING CODE 4310-32-M

[CA–010–87–4212–11; CA–18749]

Proposed Lease and Conveyance for Health Clinic in Mono County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; amendment to proposal to lease and then convey public lands.

SUMMARY: The following land is proposed as suitable for lease and conveyance to the Toiyabe Indian Health Project for use as a community health clinic under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869, et seq.).

Mt. Diablo Meridian, California

T.8N., R.23E.,
A portion of the NW ¼ NE ¼ Sec. 21.
Containing 7.16 acres, more or less.

The above described land is immediately north of a five acre site proposed for this use in the Federal Register on October 15, 1986. The

proponent amended the original application to change the location in reaction to adverse public comments.

SUPPLEMENTARY INFORMATION: The lands are not needed for Federal purposes. Lease and conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease or patent, when issued will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. All valid and existing rights.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments.

ADDRESS: Written comments should be sent to the District Manager, Bureau of Land Mangement, 800 Truxtun Ave., Room 311, Bakersfield, CA 93301. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

FOR FURTHER INFORMATION: Contact James Morrison, Bishop Area Manger, Bureau of Land Management, 873 N. Main St., Suite 201, Bishop, CA 93514; phone: (619) 872–4881.

Dated: May 13, 1987.

James S. Morrison,

Area Manager.

[FR Doc. 87–11635 Filed 5–20–87; 8:45 am]

BILLING CODE 4310–40–M

[CA–060–07–4212–11; CA 15529]

Classification of Public Lands for Recreation and Public Purposes: Los Angeles and Ventura Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described public land has been examined and found suitable for recreation and public purposes. The land is hereby classified as suitable for recreation and public purposes under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869 et. seq.) and the regulations thereunder (43 CFR Parts 2740 and 2912):

San Bernardino Meridian, California

T. 8N., R. 18W.
Section 32: NE¼NE¼;
containing 40 acres, more or less in Los Angeles County

San Bernardino Meridian, California

T. 8N., R. 19W.
Section 16: SW¼NE¼, N½SE¼, SW¼SE¼;
Section 27: SE¼NW¼;
Section 34: N½SW¼NW¼;
containing 220 acres, more or less in Ventura County

SUPPLEMENTARY INFORMATION: The State of California, Department of Parks and Recreation has filed an application to purchase the above described public land under authority of the Act of June 14, 1926, as amended. The proposed public use is for the lands to become a part of the Hungry Valley State Vehicular Recreation Area, which provides a facility of OHV recreational activity to serve the greater Los Angeles metropolitan area.

The classification is consistent with the regulations set forth in 43 CFR Parts 2410 and 2430. The lands are located adjacent to the existing Hungry valley State Vehicular Recreation Area, and the land is physically suitable for the proposed OHV use.

The lease and/or sale, when issued, will be subject to the provisions of the R&PP Act, applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. Right-of-way for the telephone line, BLM Serial No. S–3460, and all appurtenances thereto, constructed by the United States through, over, or upon the land so patented, and the right of the United States, its agents or employees, to maintain, operate, repair, or improve the same so long as needed or used for or by the United States.

2. All mineral deposits in the land so leased and/or sold, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may proscribe.

3. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

A portion of the subject lands applied for cannot be conveyed to the applicant due to encumbrances of record which preclude disposal under the R&PP Act. Therefore, for the subject lands described below, application for purchase is denied and a lease will be offered:

San Bernardino Meridian, California

T. 8N., R. 19W.
Section 16: N½SE¼;

The land is not required for any federal purposes. The lease and/or sale is consistent with the objectives and recommendations of the Indio Resource Area—Southern California Metropolitan Project Area's Management Action Summary.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of other public land laws, and the mining laws, except for mineral leasing. The segregative effect will end either upon issuance of patent, or, failing the consummation of a lease, 18 months from the date of publication, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Mike Selman, Indio Resource Area, (619) 323–4421. Information relating to this exchange, including the environmental assessment and land report, is available for review at the California Dessert District Office, 1695 Spruce Street, Riverside, California 92507.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Objections will be reviewed by the State Director, Bureau of Land Management, who may sustain, vacate or modify this realty action. In the absence of any objection, this realty action will become the final determination of the Department of the Interior.

Dated: May 14, 1987.

Gerald E. Hillier,

District Manager.

[FR Doc. 87–11579 Filed 5–20–87; 8:45 am]

BILLING CODE 4310–40–M

[CA–940–07–4212–13; CA 19519]

Exchange of Public and Private Lands in Nevada and Fresno Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land conveyance document.

SUMMARY: The purpose of this exchange was to acquire the non-federal lands because of their high values for wildlife habitat and recreational use.

particularly hunting, hiking, and primitive camping. The public interest was well served through completion of this exchange.

FOR FURTHER INFORMATION CONTACT: Viola A Andrade, California State Office, (916) 978–4815.

The United States issued an exchange conveyance document to the Southern Pacific Land Company on April 2, 1987, under section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), for the following described land:

Mount Diablo Meridian, California

T. 14 N., R. 8 E.,
Sec. 9, Lots 11 to 13, inclusive, NW¼SE¼, N½SW¼SE¼, and SE¼SW¼SE¼;

containing 77.50 acres of public land in Nevada County.

In exchange for these lands, the United States acquired the following described land from the Southern Pacific Land Company:

Mount Diablo Meridian, California

T. 19 S., R. 14 E.,
Sec. 3, S½S½;
Sec. 5, All;

Subject to: 1. The reservation of all oil, gas, and other minerals and mineral ores within or underlying the above-described real property, and those rights of ingress, egress and other rights necessary for the development, exploration and removal of same, as described in and conveyed by Deed to Bravo Oil Company, a corporation, recorded December 29, 1965, in Book 5257, Part 19, of Official Records, Document No. 104215;

2. Those rights for a right-of-way of lawful width for any and all county roads, heretofore lawfully established and now put in use upon and across any of said lands, as reserved in the Deed dated March 6, 1912, from Southern Pacific Railroad Company, a corporation, et al, to Southern Pacific Land Company, a corporation, recorded March 22, 1912, in Book 492, Page 413, of Official Records;

3. All other matters of record;

containing 861.60 acres of non-Federal land in Fresno County.

The values of the public land and non-Federal land in this exchage were equal.

At 10:00 a.m. on June 23, 1987, the non-Federal lands described above shall be open to the operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10:00 a.m. on June 23, 1987, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Inquiries concerning the land should be addressed to the undersigned officer of the Bureau of Land Management, Room E–2841, 2800 Cottage Way, Sacramento, California 95825.

Dated: May 14, 1987.

Sharon N. Janis,

Chief, Branch of Adjudication and Records.

[FR Doc. 87–11580 Filed 5–20–87; 8:45 am]

BILLING CODE 4310–40–M

[CO–050–07–4212–14; C–35430, C–35431, C–44122(a), C–44122(b), C–44125]

Notice of Realty Action; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, C–35430, C–44122(b), and C–35431, Modified Competitive Sales; C–44122(a) and C–44125, Direct Sales. Segregation from all forms of appropriation under the public land laws.

SUMMARY: The following described public lands have been examined and identified as suitable for disposal by sale and under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1701, 1713) at no less than the appraised fair market value (minimim bid price):

Las Animas County, Colorado

Sixth Principal Meridian

Case file	Legal description	Acreage
C–35430	T. 30 S., R. 51 W., Sec. 23, SE¼NW¼.	40.00
C–35431	T. 31 S., R. 52 W., Sec. 2, lot 1.	47.73
C–44122(a)	T. 34 S., R. 55 W., Sec. 26, NW¼NE¼.	40.00
C–44122(b)	T. 34 S., R. 55 W., Sec. 26, NW¼SE¼.	40.00
C–44125	T. 30 S., R. 56 W., Sec. 10, SE¼NE¼.	40.00

The total acreage in this sale offering is 207.73 acres.

These lands are hereby segregated from appropriation under the public land laws, including the general mining laws, pending decision and action on the sale proposal.

Parcel C–35430 will be offered to Danny Johnson, Viola Chappell and Mable Peoples by modified competitive procedures at not less than fair market value.

Parcel C–35431 will have bids accepted only from Boyd Rose, Lawrence Jordan, and Dollie Couchman by modified competitive procedures at not less than fair maket value.

Parcel C–44122(a) will be offered directly to Lester Gegenheimer at not less than fair market value.

Parcel C–44122(b) will be offered to Lester Gegenheimer or Joe Whittenburg by modified competitive procedures at not less than fair market value.

Parcel C–44125 will be offered directly to Robert Rynard at not less than fair market value.

Sale Procedures: Designated bidders will be notified directly of specific sale procedures. Any of the parcels not sold on the initial sale day will be reoffered for sale by competitive bidding to the general public on the first and third Wednesday each month thereafter until sold or the sale is canceled. Bidding will be by sealed bid only. No bids will be accepted for less than the minimum bid price for each parcel. Bid opening will be at 2 p.m. on the sale day at the Canon City District Office.

A more detailed sales prospectus providing specific information on each sale parcel, including any patent reservations and restrictions will be available upon request after the initial sale day.

DATES: Comment period ends 45 days from this publication.

FOR FURTHER INFORMATION AND PUBLIC COMMENT: Contact the District Manager, Canon City District Office, 3170 East Main Street, P.O. Box 311, Canon City, CO 81212. Interested parties should submit comments within 45 days of this notice. Comments will be evaluated by the District Manager, who may cancel or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Donnie R. Sparks,

District Manager.

[FR Doc. 87–11636 Filed 5–20–87; 8:45 am]

BILLING CODE 4310–JB–M

[NV–020–07–4212–11; N–43020]

Notice of Realty Action; Nevada

ACTION: Notice of realty action.

SUMMARY: Lease/Conveyance of Public Lands for Recreation and Public Purposes: N–43020.

DATE: May 15, 1987.

The following public lands in Pershing County, Nevada have been identified as suitable and will be classified for lease or sale under the Recreation and Public

Purpose Act, as amended (43 U.S.C. 869, et seq.):

Mount Diablo Meridian, Nevada

T. 27 N., R. 31 E.,
Sec. 20, NE¼NE¼.

Containing 40 acres more or less.

The Lovelock Racing Association proposes to use the land for a stock car racing track, motocross motorcycle track and BMX bicycle track.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public's interest.

The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purpose Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Those rights for highway purposes which have been granted to Nevada Department of Transportation, its successors or assigns, by Permit No. NEV–048800, under the Act of November 9, 1921 (23 U.S.C. Sec. 18).

2. Those rights for transmission line purposes which have been granted to Sierra Pacific Power Company, its successors or assigns, by Permit No. NEV–066620, under the Act of March 4, 1911 (43 U.S.C. 961).

3. Those rights for communication line purposes which have been granted to Bell Telephone Company of Nevada, its successors or assigns, by Permit No. N–12799, under the Act of March 4, 1911 (43 U.S.C. 961).

4. Those rights for water pipeline purposes which have been granted to Lovelock Meadows Water District, its successors or assigns, by Permit No. N–43894, under the Act of October 21, 1976 (43 U.S.C. 1761).

5. Those rights for highway purposes which have been granted to Pershing County, its successors or assigns, pursuant to Sec. 8 of the Act of July 26, 1866 (43 U.S.C. 932).

6. An easement 100 feet in width along the northern boundary of the parcel. The easement will be for road and public utility purposes.

Detailed information concerning this action is available for review of the office of the Bureau of Land Management, Winnemucca District, 705 E., 4th Street, Winnemucca, Nevada 89445.

Upon publication of this notice of **Federal Register** the above described lands will be segregated from all forms of appropriations under the public land laws and the general mining laws, but not the Recreation and Public Purposes Act and the mineral leasing laws.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested persons may submit comments to the Bureau of Land Management, District Manager, Winnemucca District Office, 705 E. 4th Street, Winnemucca, Nevada 89445. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: May 15, 1987.

Frank C. Shields,

District Manager, Winnemucca.

[FR Doc. 87–11637 Filed 5–20–87; 8:45 am]

BILLING CODE 4310–HC–M

[NM–040–07–5420–10–ZGKE; OK NM 63441]

Issuance of Disclaimer of Interest to Lands in Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to issue disclaimer of surface interest.

SUMMARY: Notice is hereby given that the United States of America, pursuant to the provisions of the Federal Land Policy and Management Act (FLPMA) of 1976 Section 315, 43 U.S.C. 1745 (1976) does hereby disclaim and release to Allen E. Greer all interest in the surface estate only in the land described below.

DATE: Comments should be received by August 19, 1987.

ADDRESS: Comments should be sent to: Bureau of Land Managment, 9522-H East 47th Place, Tulsa, OK 74145.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, Oklahoma Resource Area Headquarters, 405–231–5491.

The following is a metes and bounds description of the SW¼ of Section 20 and that portion of the accretion and riparian acreage to Lots 8 and 9, Section 29, and Lot 1, Section 30 in the ancient riverbed in Section 29 west of a fence, T. 10 N., R. 4 W., Indian Meridian, located along the Canadian River, McClain County, Oklahoma.

Beginning at the ancient meander corner on the ancient right bank between Sections 29 and 30; Thence N. 0°11'6" W., 1,937.25 feet to the ancient meander corner on the ancient left bank between Sections 19 and 20; Thence with the West line of said Section 20 North 627.00 feet to the Northwest corner of Lot 1, Section 20; Thence East 2,640.00 feet to center of said Section 20; Thence South 2,606.15 feet to the Southeast corner of Lot 2, Section 20; Thence with the South line of said Section 20 West 383.22 feet to the ancient meander corner on the ancient left bank between Sections 20 and 29; Thence N. 86°13'10" W., 270.62 feet to a point; Thence South 2,101.64 feet to a point on the ancient right bank; thence with the ancient right bank the following courses and distances: N. 49°30' 00" W., 271.25 feet; N. 23°00'00" W., 660.00 feet; N. 40°00'00" W., 1,122.00 feet; N. 58°45' 00" W., 930.09 feet to the point of beginning and containing 194.74 acres more or less of land.

After review of the official records, it has been determined by the Bureau of Land Managment that all of the land is accrected, due to the movement of the South Canadian River to the north. The applicant is entitled to a disclaimer because the land under application is accreted to private lands, and therefore the lands are not owned by the United States.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments on the above disclaimer may present their views in writing to the District Manager at the address indicated above. If no protests are received the disclaimer will become effective on or about July 30, 1987.

Dated: April 28, 1987.

Larry L. Woodard,

State Director.

[FR Doc. 87–11691 Filed 5–20–87; 8:45 am]

BILLING CODE 4310–FB–M

Exchange of Public Lands In Jackson County, OR

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 35 S., R. 2 W.:
Sec. 29, SE¼NE¼
T. 35 S., R. 4 W.:
Sec. 5, NW¼SE¼
T. 35 S., R. 4 W.:
Sec. 17, SW¼NW¼
T. 40 S., R. 2 E.:

Sec. 20, NW¼NW¼

The area described aggregates approximately 160 (±) acres in Jackson County, Oregon.

In exchange for these lands, the Federal Government will acquire the following described private lands from Thomas Terbeck:

Willamette Meridian

T. 35 S., R. 2 E.:
Sec. 30, SW¼NE¼, SE¼SW¼, W½SE¼

The area described above aggregates approximately 160 (±) acres in Jackson County, Oregon.

The purpose of the land exchange (identified by serial No. OR 41809) is to facilitate resource management opportunities in the Butte Falls Resource Area. The private land being offered has very important values for wildlife in protection of critical deer winter range. The public interest will be highly served by making this exchange.

The value of the lands to be exchanged is approximately equal, and upon completion of the final appraisal of the lands, cash equalization payments will be made if the values are within twenty-five percent (25%).

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The reservation of leasable minerals on the parcel in T. 40 S., R. 2 E., Sec. 20, NW¼NW¼ until the termination of oil and gas lease OR 26963. The lease shall remain in effect until expiration.

3. All other valid existing rights, including but not limited to any right-of-way, easement or lease of record.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

Detailed information concerning the exchange, including the environmental analysis, is available for review at the Medford District Office, 3040 Biddle Rd., Medford, OR 97501.

For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the Medford District Manager at the above address.

Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date of issue: May 11, 1987.

David A. Jones,

District Manager.

[FR Doc. 87-11581 Filed 5-20-87; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Availability of a Final Environmental Impact Statement on the Great Swamp, National Wildlife Refuge Master Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Final Environmental Impact Statement (FEIS) on the Master Plan for the Great Swamp National Wildlife Refuge in Morris County, New Jersey is available for public review. The statement discusses four alternatives for the future management of the refuge.

DATE: Written comments are requested by June 26, 1987.

ADDRESS: Comments should be addressed to: Howard N. Larsen, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Individuals who need additional copies of the FEIS should contact Curtis A. Laffin, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158, (617) 965-5100, X-222. Copies have been sent to all agencies and organizations that participated in review of the Draft EIS. Copies will be available for examination at FWS in Newton Corner, Massachusetts and at the Great Swamp National Wildlife Refuge Headquarters, Pleasant Plains Road, Harding Township, New Jersey.

SUPPLEMENTARY INFORMATION: This draft environmental impact statement addresses a comprehensive land use plan setting forth long-term (ten to 20 years) objectives for resource management and public use on the refuge. Highlights of the alternatives that are analyzed and evaluated are:

1. *No Action*—perpetuates current management practices and levels of public use, habitat and wildlife population protection, water management in the refuge's impoundments, management of upland field and forest habitat, wildlife surveys and bird banding.

2. *Proposed Action*—emphasizes wetland and upland habitat improvement for important wildlife species and many other species. Other enhancements will expand wildlife education, interpretation and wildlife oriented recreation. Specific actions include: additional grassland, brush and timber management to provide habitat and wildlife diversity, raccoon population control, trail system expansion, land acquisition, addition of a Wildlife Interpretive Center, closing Pleasant Plains Road to through traffic, upgrading water management capabilities, increased production and management of selected wildlife species, and actions to minimize impacts of watershed development outside the refuge.

3. *Public Use Alternative*—expands options for public access and for wildlife education and interpretation while maintaining a wildlife habitat diversity through moderate management activities. Proposed public uses include canoeing, fishing, horseback riding trails, a tour route and observation blinds, new visitor contact points and additional parking spaces. Land acquisition includes floodplains of some streams which flow into the refuge. A trail system through the refuge between two county environmental centers will be constructed.

4. *Wildlife Management Alternative*—closes Pleasant Plains Road to through traffic and intensifies most wildlife management activities, especially for woodcock and waterfowl. Raccoon management to reduce the population will be implemented. Major management changes include acquisition of land which may be flooded by raising dikes and woodcock habitat management which would set back successional types of upland habitat.

Robert L. Miller,

Acting Regional Director.

[FR Doc. 87-11620 Filed 5-20-87; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4231, Block 181, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore based located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 14, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 15, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–11582 Filed 5–20–87; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Availability of Final Environmental Assessment and Finding of no Significant Impact

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of availability of final environmental assessment and 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 Final Regulations (40 CFR Parts 1500–1508); and the U.S. Section's Operational Procedures for Implementing section 102 of the National Environmental Policy Act (NEPA), published in the **Federal Register** September 2, 1981 (46 FR 44083); the U.S. Section hereby gives notice that the Final Environmental assessment and Finding of No Significant Impact for an international agreement for a joint project for improvement of the quality of the waters of New River at Calexico, California and Mexicali, Baja California are available. A notice of finding of no significant impact dated February 27, 1987 provided a thirty (30) day comment period before making the finding final. The Notice was published in the **Federal Register** on March 16, 1987 (52 FR 8118).

FOR FURTHER INFORMATION CONTACT: Mr. M.R. Ybarra, U.S. Section Secretary; International Boundary and Water Commission, United States and Mexico, United States Section; The Commons, C–310; 4171 North Mesa; El Paso, Texas 79902. Telephone: (915) 534–6698, FTS 570–6698.

SUPPLEMENTARY INFORMATION:

Proposed Action

The action proposed is that the Government of the United States enter into an agreement with the Government of Mexico, through the International Boundary and Water Commission (Commission), to provide for a joint project for improvement of the quality of the waters of New River. The agreement provides for construction, operation, and maintenance of the joint project in Mexico in such manner to reduce discharges of untreated sewage into New River crossing the boundary into the United States at Calexico, California.

Alternatives Considered

Four alternatives were considered: The Proposed Action Alternative provides for the Governments of the United States and Mexico to enter into an agreement for Mexico to (1) construct a new pumping plant of adequate capacity to handle the sewage load of Mexicali, (2) acquire three standby pumps for two existing pumpingh plants, and (3) acquire mobile sewer line cleaning equipment. Mexico would also proceed concurrently with rehabilitation of collector lines in Mexicali as well as a regualr maintenance program for the Mexicali sanitation works.

Other recommendations of the Proposed Action Alternative include sharing equally by the two governments the cost of these features and that Mexico will pay any additional cost over the estimate for the new pumping plant, timely implementation of the recommended features, and finally Commission supervision over construction, operation, and maintenance of the project.

Two alternatives, construction of a separate line for collection of industrial waste discharges and installation of additional booster pumps in existing pressure lines, were considered but were eliminated from further consideration either due to excessive cost or impracticality.

The No Action Alternative will result in no anticipated change in existing conditions. In the event Mexico constructs, operates, and maintains the proposed project features at its own cost and without the proposed agreement, there will be no firm means to assure that this construction, operation, and maintenance will reduce pollution in U.S. territory. The risk is great that sewage will continue to cross the boundary and potential significant pollution of New River and other health hazards will continue without a firm basis for obtaining immediate and effective corrective actions.

Availability

Single copies of the Final Environmental Assessment and Final Finding of No Significant Impact may be obtained by request at the above address.

Dated: May 7, 1987.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 87-11679 Filed 5-20-87; 8:45 am]

BILLING CODE 4710-03-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-1 (Sub-No. 192X)]

Chicago and North Western Transportation Co. Abandonment Exemption; Guthrie and Dallas Counties, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of interim trail use or abandonment.

SUMMARY: The Commission issues a Notice of Interim Trail Use or Abandonment in response to a joint petition by Central Iowa Energy Cooperative and the Iowa Trails Council, Inc., that was supported by Chicago and North Western Transportation Company.

DATE: This notice will be effective May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: The exemption noticed at 52 FR 710 (January 8, 1987) is modified to allow parties to negotiate a final Interim Trail Use Agreement within 180 days from the effective date of this decision. The public use condition imposed in the exemption proceeding is also modified to expire upon execution of a final Interim Trail Use Agreement by the parties.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area).

Decided: May 7, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-11658 Filed 5-20-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31031]

Merchants Grain and Transportation, Inc.; Continuance in Control Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts: (a) Merchants Grain & Transportation, Inc. (Merchants) from the requirements of 49 U.S.C. 11343 to continue in control of Poseyville and Owensville Railroad Company, Inc. (P&O), subject to employee protective conditions; and (b) P&O from the requirements of 49 U.S.C. 10746 with regard to the transportation of traffic in which Merchants may have an interest.

DATES: This exemption will be effective on May 26, 1987. Petitions to reopen must be filed by June 10, 1987.

ADDRESSES: Send petitions referring to Finance Docket No. 31031 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Peter A. Greene, 1920 N Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area).

Decided: May 13, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 87-11657 Filed 5-20-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31032]

Wisconsin and Calumet Railroad Co., Inc.; Modified Rail Certificate

On April 14, 1987, a notice was filed by the Wisconsin and Calumet Railroad Company, Inc. (W&C), for a modified certificate of public convenience and necessity under 49 CFR 1150.23. By contract with the Wisconsin River Rail Transit Commission (WRRTC), W&C is authorized to operate the 41-mile rail line in the State of Wisconsin between Waukesha (milepost 20.5) and Milton Junction (milepost 61.5).

Prior to abandonment, the line was owned and operated by the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (MILW). The line was authorized for abandonment by the Commission's decisions in Docket No. AB-7 (Sub-No. 59), served June 13, 1979 and October 24, 1979.

In Finance Docket No. 29237, *State of Wisconsin Acquisition of Certain Lines of Railroad* (not printed), served February 29, 1980, the State of Wisconsin was authorized to acquire the involved rail line. Operation of the line is the responsibility of the WRRTC, a public agency within the State of Wisconsin. WRRTC contracted with W&C to operate the line.

This notice must be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: May 13, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 87-11659 Filed 5-20-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with the Department policy, 28 CFR 50.7, notice is hereby given that on May 8, 1987, a proposed consent decree in *United States v. Kurdziel Iron Industries, Inc.*, was lodged with the United States District Court for the Western District of Michigan. The proposed consent decree resolves a judicial enforcement action brought by the United States against Kurdziel for violations of the Resource Conservation and Recovery Act at its Rothbury, Michigan gray iron foundry.

The proposed consent decree requires Kurdziel to conduct sampling and analyses of specified land disposal units and to close all such units which are found to contain hazardous wastes. In addition, the consent decree requires Kurdziel to pay a civil penalty of $82,034.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC, and should refer to *United States v. Kurdziel Iron Industries*, D.J. Ref. 90-7-1-358.

The proposed consent decree may be examined at the office of the United States Attorney, 399 Federal Building,

Grand Rapids, Michigan 49503, and at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. 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 $1.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 87-11639 Filed 5-20-87; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 4-87]

Privacy Act of 1974; Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to modify the system of records entitled "Witness Immunity Records (JUSTICE/CRM 022)" which is maintained by the Criminal Division.

This is a system of records for which notice was published in the **Federal Register** on September 30, 1977, consistent with provisions of 5 U.S.C. 552a(e) (4) and (11). However, the Criminal Division now proposes to automate certain summary-type data, e.g., name of individual, immunity request number, date of receipt, etc., to assist in its efforts to track and control the immunity requests and to improve its ability to determine the status thereof. Revisions are being made to various sections of the notice to reflect changes due to the automation effort. The "Storage" and "Retrievability" sections indicate that certain summary data will be stored on magnetic disks and retrieved by on-line searches of individual names and request numbers to locate the required file; and, the "Safeguards" section reflects increased security for the automated system. Minor editorial changes have also been made to the system notice for clarity purposes.

The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the proposal to partially automate this system. Therefore, OMB, the Congress, and the public are invited to submit written comments on this system. Comments should by addressed to J. Michael Clark, Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 6402, 601 D Street, NW., Washington, DC 20530. If no comments are received from either the public, OMB, or the Congress by July 20, 1987, the proposed modifications will be implemented without further notice in the **Federal Register.**

Dated: May 8, 1987.

Harry H. Flickinger,

Acting Assistant Attorney General for Administration.

JUSTICE/CRM-022

SYSTEM NAME:

Witness immunity Records.

SYSTEM LOCATION:

U.S. Department of Justice: Criminal Division: 10th Street and Constitution Avenue NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential or actual witnesses for whom immunity (pursuant to 18 U.S.C. 6001–6005) is proposed.

CATEGORIES OF RECORDS IS THE SYSTEM:

The system contains background information on the individual and the case of matter in which he is expected to testify in a processing before or ancillary to a court or grand jury of the United States or an agency of the United States. The information maintained in the system is entered from DOJ Form-LAA-111, "Request for Immunity Authorization.", which is completed by the United States Attorneys, or from other formal requests for immunity from Federal agencies. The system also contains a record of action taken by the Criminal Division on the request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 44 U.S.C. 3101. The system is also maintained to implement the provisions of 18 U.S.C 6001–6005 and 18 U.S.C. 2514.

PURPOSE OF THE SYSTEM:

The system is essential to the Division's efforts in granting immunity requests as stated in 18 U.S.C. 6001–6005. Requests for immunity may be made by a United States Attorney or a Federal agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record may be disseminated to a federal, state, local, or foreign law enforcement agency to alert such agency to the proposed immunity or, to the extent necessary for identification purposes, to elicit information concerning the potential or actual witness which may be necessary to an evaluation of the proposed immunity; (2) a record relating to a proposed immunity that has been referred to the Department of Justice for approval, may be disseminated to the referring agency to notify such agency of the status of the referral or of any decision or determination that has been made.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents are stored in file folders in locked cabinets; selected summary data are stored on magnetic disks and on manual index cards which are also kept in locked cabinets.

RETRIEVABILITY:

Summary data, e.g., names, request numbers, dates of receipt and completion are retrieved from manual index cards for requests received prior to June 1986; for June 1986 and subsequent years, summary data are retrieved from magnetic disks. File folders are accessed through the manual or automated indexes.

SAFEGUARDS:

The records are safeguarded and protected in accordance with applicable Departmental rules. Security for the automated records include strictly controlled access codes and passwords. Only authorized Criminal Division employees will have access to the system.

RETENTION AND DISPOSAL:

Dispose 10 years after close of request.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General; Criminal

Division; U.S. Department of Justice; 10th Street and Constitution Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a (j)(2) or (k)(2). Inquiry concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a (j)(2) or (k)(2). To the exent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request". Include in the request the name of the individual involved, his birth date and place, or other identifying number of information which may be of assistance in locating the record, the name of the case or matter involved, if known, and the name of the judicial district involved, if known. The requester will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

1. Federal government prosecutors; 2. Federal agencies; 3. Department of Justice attorneys and personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (2), (3) and (e)(4) (G), (H) and (I), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

[FR Doc. 87-11640 Filed 5-20-87; 8:45 am]

BILLING CODE 4410-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences (GSP) Subcommittee; Notice of Results of Reviews of Petitions Requesting Changes in the List of Articles Eligible for Duty-Free Treatment Under the GSP

This publication provides the disposition of the petitions accepted for review in the 1986 annual review of the GSP program. These petitions requested changes in the list of imported articles eligible for duty-free treatment under the U.S. Generalized System of Preferences (GSP). The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461-2465). The review was conducted pursuant to regulations codified as 15 CFR 2007. Results of the review will be implemented by a proclamation, which will be issued shortly. These changes will take effect on July 1, 1987. All communications with respect to this notice should be addressed to the Executive Director, Generalized System of Preferences, Room 517, 600 17th St., NW., Washington, DC 20506. Questions may be directed to any member of the GSP Information Center at (202) 395-6971.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

Case No.	TSUS or TSUSA [1]	Article	Petitioner	Action taken
		A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.		
86-1	145.18	Filberts, not shelled	Government of Turkey	Petition denied.
86-2	145.46	Filberts, shelled	Government of Turkey	Petition denied.
86-3	146.30	Avocados	Government of Mexico	Petition denied.
86-4	148.40	Olives	Government of Mexico	Petition denied.
86-5	148.96	Pineapples, fresh	Government of Colombia	Petition denied.
86-6	170.40	Filler Tobacco, not stemmed	Cigar Association of America, Washington, DC.	Petition granted.
86-7	170.45	Filler Tobacco, stemmed	Cigar Association of America, Washington, DC.	Petition granted.
86-8	315.35	Abaca Cordage	Government of the Philippines	Petition granted.
86-9	402.56	Benzyl Chloride	Compania Quimica, Ameyal, Mexico.	Petition withdrawn.
86-10	403.45	Benzyl Alcohol	Compania Quimica, Ameyal, Mexico.	Petition withdrawn.
86-11	404.16	Terephthalic Acid	Celanese Fibers, Charlotte, NC	Petition withdrawn.
86-12	405.44	Toluenediisocyanates, unmixed	Industrias Cydsa Bayer, Mexico	Petition withdrawn.
86-13	406.39pt	Orgacel T	Quimica Organica de Mexico, Mexico.	Petition withdrawn.
86-14	409.78	Direct Dyes, black	Government of Argentina	Petition denied.
86-15	409.82	Direct Dyes	Government of Argentina	Petition denied.
86-16	410.28	Color Pigments	Government of Argentina	Petition denied.
86-17	425.9960pt	Purified Fumaric Acid	Government of Colombia	Petition granted for purified fumaric acid only.
86-18	533.30	Earthenware Mugs	Russ Berrie and Company, Oakland, NJ.	Petition granted graduate Korea, Taiwan, Brazil.
86-19	533.64	Household Ware	Government of the Philippines	Petition granted.
86-20	540.27	Enamels	Government of Mexico	Petition withdrawn.

Case No.	TSUS or TSUSA [1]	Article	Petitioner	Action taken
86-21	632.46	Strontium, unwrought	Government of Mexico, Fomento y Desarrollo de Pequenos Mineros, Mexico.	Petition granted.
86-22	681.0410	Pillow Blocks	Government of Mexico, LKS Rodamientos y Equipos, Mexico.	Petition denied.
86-23	715.62	Time Switches	Admiral Division of Magic Chef Inc., Galesburg, IL.	Petition granted.
86-24	715.64	Refrigerator Defrost Timer	Admiral Division of Magic Chef Inc., Galesburg, IL.	Petition granted.
		B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.		
86-47	402.12	Phthalic Anhydride	USX Corporation, Pittsburg, PA	Petition denied.
86-25	409.3410	Dioctyl Phthalate	USX Corporation, Pittsburg, PA	Petition denied.
86-26	532.22	Mosaic Tile	Tile Council of America, Washington, DC.	Graduated Taiwan.
86-27	610.8413	Steel Flanges	American Pipe Fittings	Graduated Korea, Taiwan, Brazil.
86-28	610.8415	Flanges	American Pipe Fittings Association, Washington, DC.	Graduated Korea, Taiwan, Brazil.
86-29	610.8418	Flanges	American Pipe Fittings Association, Washington, DC.	Graduated Korea, Taiwan, Brazil.
86-30	610.8421	Flanges	American Pipe Fittings Association, Washington, DC.	Graduated Korea, Taiwan, Brazil.
86-31	610.8424	Flanges	American Pipe Fittings Association, Washington, DC.	Graduated Korea, Taiwan, Brazil.
86-32	610.8428	Flanges	American Pipe Fittings Association, Washington, DC.	Graduated Korea, Taiwan, Brazil.
86-33	610.86	Steel Pipe Couplings	Picoma Industries, Houston, TX	Graduated Korea, Taiwan.
86-34	688.32	Steel Pipe Fittings	Picoma Industries, Houston, TX	Graduated Korea.
86-35	732.3875	Caliper Brakes	Dia Compe Inc., West Palm Beach, FL.	Petition withdrawn.
		C. Petitions to remove duty-free status from a beneficiary developing country* for a product on the list of eligible articles for the Generalized System of Preferences.		
86-36	252.75 (Brazil, Mexico).	Writing Paper	Stationery International Trade Committee, Washington, DC.	Petition denied.
86-37	256.9044 (Brazil, Mexico).	Filler Paper	Stationery International Trade Committee, Washington, DC.	Petition denied.
86-38	256.52 (Brazil, Mexico).	Other Memo Pads	Stationery International Trade Committee, Washington, DC.	Petition denied.
86-39	256.9080 (Brazil).	Paint Strainers	Louis M. Gerson Company, Middleboro, MA.	Petition granted.
86-40	410.72 (Turkey).	Aspirin	Monsanto Corporation, St. Louis, MO.	Petition granted.
86-48	421.06	Sodium Hydrosulfite	Virginia Chemicals, Portsmouth, VA.	Petition granted.
86-41	428.52 (Taiwan).	Butyl Acetate	Celanese Chemical Company, Washington, DC, BASF Corporation, Washington, DC.	Petition denied.
86-42	647.03 (Taiwan).	Butt Hinges	Stanley Hardware, New Britain, CT	Petition granted.
86-43	635.00 (Singapore, Taiwan).	Steel Hangers	American Institute of Steel Construction, Washington, DC.	Petition granted.
86-44	654.08 (Mexico).	Steel Cookingware	General Housewares Corporation, Washington, DC.	Petition granted.
86-49	725.46 (Korea, Taiwan).	Guitars	Peavey Electronics, Meridian, MS	Petition granted.
86-50	727.23 (Thailand).	Directors Chairs	American Furniture Manufacturers Association, Washington, DC.	Petition denied.
86-51	727.29 (Yugoslavia, Singapore).	Non-folding Chairs	American Furniture Manufacturers Association, Washington, DC.	Petition granted on Yugoslavia, petition denied on Singapore.

Case No.	TSUS or TSUSA [1]	Article	Petitioner	Action taken
86-52	727.35 (Taiwan, Singapore, Yugoslavia).	Wood Furniture	American Furniture Manufacturers Association, Washington, DC.	Petition granted on Taiwan, petition denied on Singapore and Yugoslavia.
86-53	727.40 (Taiwan, Yugoslavia).	Furniture Parts	American Furniture Manufacturers Association, Washington, DC.	Petition granted on Taiwan, Yugoslavia graduated on chair parts only.
86-54	727.70 (Taiwan).	Other Furniture	American Furniture Manufacturers Association, Washington, DC.	Petition granted.
86-55	735.0995 (Korea, Taiwan).	Inflatable Balls	National Latex Products Company, Ashland, OH.	Petition on Taiwan denied, petition on Korea withdrawn.
86-56	737.9536 (Korea, Taiwan).	Toy Balloons	National Latex Products Company, Ashland, OH.	Petition denied.
86-45	751.2015 (Taiwan).	Umbrella Frames	Almet/Lawnlite, Portland, TN, California Umbrella, Pomona, CA.	Petition granted.
86-57	772.06pt (Taiwan).	Melamine Tableware	American Melamine Institutional Tableware Association, Washington, DC.	Petition denied.
86-58	772.09pt (Taiwan).	Melamine Trays	American Melamine Institutional Tableware Association, Washington, DC.	Petition denied.
		D. Petition to waive competitive need limits for a beneficiary country for a product on the list of eligible articles for the Generalized System of Preferences.		
86-46	465.05 (The Philippines).	Fatty Acid Esters	Government of the Philippines	Petition withdrawn.

[1] Tariff Schedules of the United States annotated (19 U.S.C. 1202).
[2] Countries subject to petition are identified under TSUS Number.

[FR Doc. 87-11660 Filed 5-20-87; 8:45 am]
BILLING CODE 3190-01-M

Section 203 Investigation Regarding Specialty Steel Import Relief

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Trade Representative (USTR), on behalf of the President, has received a report and recommendation regarding the extension of import relief for stainless steel and alloy tool steel from the United States States International Trade Commission (USITC) pursuant to section 203 of the Trade Act of 1974. Public comments related to such import relief are due by 12:00 noon, Thursday, June 4, 1987.

FOR FURTHER INFORMATION CONTACT: Joe Papovich or Elena Bryan, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506, (202) 395-4510. Copies of the USITC's report will be available from the Secretary, USITC, Room 156, 701 E Street, NW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION: On May 15, 1987, the United States International Trade Commission (USITC) reported its findings in an investigation of Stainless Steel and Alloy Tool Steel, Inv. No. TA-203-16, to the President through the United States Trade Representative (USTR) pursuant to section 203 of the Trade Act of 1974 (19 U.S.C. 2253). The USITC advised that the program of import relief granted by the President to the specialty steel industry on July 19, 1983, for a period of four years, should be extended for certain specialty steel products.

Pursuant to section 203(i)(3), the USITC reported the following findings:

Chairman Susan Liebeler and Vice Chairman Anne E. Brunsdale provided general advice on the probable economic effects of terminating import relief provided to domestic producers of certain stainless steel and alloy tool steel products. They also provided general advice on the considerations set forth in section 202(c) of the Trade Act of 1975.

Commissioners Alfred Eckes and Seeley G. Lodwick advised the President that termination of the import relief program with respect to stainless steel sheet and strip, and stainless steel plates would not have an adverse effect on the domestic industries producing those products, assuming the continued administration of voluntary restraint agreements at present levels. They also advised that termination of the import relief program would have an adverse effect on the industries producing stainless steel bars, stainless steel wire rod, and alloy tool steel.

Commissioner David B. Rohr advised the President that, with respect to stainless steel sheets and strip, and stainless steel plates, termination of the import relief program would not have a significant adverse economic effect on the industries producing these products, assuming the continued administration of the voluntary restraint agreements at present levels. With respect to stainless steel bars and stainless steel wire rod, termination of the import relief program would have a significant adverse economic effect on the industries producing these products. With respect to alloy tool steel, Commissioner Rohr advised that, while termination of the import relief program would have some adverse economic effects on the operation of the industry, he finds little indication that firms in this industry have any significant plans to use any further period of relief to further adjust to import competition.

After receiving the USITC's advice and recommendations, the President must determine what method and amount of import relief he will provide, unless he determines that the extension of import relief is not in the national

economic interest. Any extension of import relief can be at a level no more restrictive than that in effect immediately before such extension and can be of no longer than 3 years duration. The existing import relief program expires on July 19, 1987.

In determining whether to continue import relief, and if so, what form of relief he will provide, the President must take into account, in addition to other considerations he may deem relevant, the following factors:

(1) The probable effectiveness of the import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition and other considerations relevant to the position of the industry in the nation's economy;

(2) The effect of import relief on consumers and on competition in the domestic market for such products;

(3) The effect of import relief on the international economic interest of the United States;

(4) The impact on the United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

(5) The geographic concentration of imported products marketed in the United States;

(6) The extent to which the United States' market is a focal point for exports of such articles by reason of restraints on exports of such articles to, or on imports of such articles into, third country markets; and

(7) The economic and social costs which would be incurred by taxpayers, communities, and workers if an extension of import relief was or was not provided.

Particular emphasis should be given to point (1) concerning the effectiveness of relief to promote adjustment, and industry's efforts/plans to adjust.

Following interagency review and advice, the USTR will make a recommendation to the President regarding the appropriate form an extension of import relief should take, or, alternatively, whether it would be contrary to the economic interests of the United States to extend such import relief.

USTR welcomes briefs and comments from interested parties and interested members of the public regarding the extension of import relief. Due to the time constraints of a section 203 case, briefs or comments must be succinct and presented as early as possible, in no event later than 12:00 noon, Thursday, June 4, 1987. Twenty (20) copies of any brief or comment must be filed in conformity with 15 CFR Part 2003 with the Secretary, Trade Policy Staff Committee, Room 521, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506. Any information to be treated as "business confidential" must be so marked on the first page and on each succeeding page, and be accompanied by a non-confidential summary thereof.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 87-1171 Filed 5-20-87 8:45 am]

BILLING CODE 3910-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-15735; 812-6673]

Bankers Security Life Insurance Society et al.

May 13, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Bankers Security Life Insurance Society ("Bankers Security"), Bankers Security Variable Life Separate Account III, Bankers Security Variable Life Separate Account IV ("BSL Accounts III and IV"), United Services Life Insurance Company ("United Services"), United Services Variable Life Separate Account I, United Services Variable Life Separate Account II, United Services Variable Life Separate Account III and United Services Variable Life Separate Account IV ("USL Accounts I, II, III and IV"), USLICO Securities Corporation ("USLICO Securities"), and Bankers Centennial Management Corp. ("BCMC").

Relevant 1940 Act sections: Exemption requested *under* section 6(c) *from* Sections 2(a)(32) and (a)(35), 18(i), 22(c), (d) and (e), 26(a) (1) and (2), 27(c) (1) and (2), 27(f), 27(h) and 27(h)(1) of the 1940 Act, and Rules 6e-2(b)(1), (b)(10), (b)(12), (b)(13), and (c), 22c-1 and 27f-1 thereunder.

Summary of application: Applicants seek an order to permit the issuance and funding of certain single premium variable life insurance contracts issued by Bankers Security ("BSL contract") and by United Services ("USL contract") which may be considered to impose a contingent deferred sales charge ("CDSL"), and which use the 1980 Commissioners Standard Ordinary Mortality Tables ("CSO Tables") instead of the 1958 CSO Tables to measure the cost of insurance charge in determining what is deemed to be a sales load.

Filing date: The application was filed on April 2, 1987.

Hearing or notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 4601 Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Margaret Warnken, Financial Analyst, (202) 272-2058 or Lewis B. Reich, Special Counsel, (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Bankers Security is a stock life insurance company organized under the laws of the State of New York in 1917 under the name The Morris Plan Insurance Society and it adopted its present name in 1946. BSL Accounts III and IV were established in January, 1986, under the provisions of the New York Insurance Law and each is registered as an open-end management investment company under the 1940 Act. United Services is a stock life insurance company organized under the laws of the District of Columbia in 1937, and redomesticated under the laws of Virginia in 1984. USL Accounts I, II, III and IV were established in September, 1986, under the provisions of the Virginia Insurance Law and each is registered as an open-end management investment company under the 1940 Act. USLICO Securities, the principal underwriter of the contracts, is a registered broker/dealer under the Securities Exchange Act of 1934. BCMC is the investment adviser for BSL

Accounts III and IV and USL Accounts I, II, III and IV. Bankers Security, United Services, USLICO Security and BCMC are affiliated companies, and are, either directly, or indirectly, wholly owned by USLICO Corporation.

2. Bankers Security presently issues the BSL contract funded by Bankers Security Variable Life Separate Accounts I and II ("BSL Accounts I and II"), which are also segregated accounts registered as open-end management investment companies under the 1940 Act. Bankers Security, *et al.* received exemptive relife to issue and fund the BSL contract through BSL Accounts I and II on March 12, 1986, Release No. IC–14982. BSL Account I primarily invests in stocks; BSL Account II is a money market account. BSL Account III will invest primarily in bonds; BSL Account IV is an asset allocation account, which may invest in stocks, bonds and/or money market instruments. BSL Accounts III and IV fund the *same contract*, the BSL contract, thereby allowing the owner the choice of four investment options through a single contract. The Applicants request that the Commission extend to BSL Accounts III and IV the same relief extended to BSL Accounts I and II.

3. United Services proposes to issue the USL contract funded by USL Accounts I, II, III and IV. The USL contract is substantially the same single premium variable life insurance contract as the BSL contract, but because United Services sells in a specialized military market, it requires products under its own name. A description of the BSL contract may also serve to describe the USL contract, so that at times "single premium contract" is used to refer to both. The investment options of the USL Accounts follow those of BSL Accounts: I (stocks), II (money market), III (bonds) and IV (asset allocation).

4. No front-end sales charges are deducted from the single premium payment to purchase the contract. During the contract's first ten years, the cash surrender value will be lower than its benefit base, a value used to calculate death benefits and cash surrender values. Surrender values are structured in a manner that may be considered to impose a CDSL. Applicants request exemptive relief to eliminate any doubt regarding full compliance with the 1940 Act and the rules thereunder in light of the CDSL. Cash surrender values under the contract are structured so that they are less than the benefit base for the first ten years of the contract. Assuming a net investment return of 4-½%, the benefit base will be the net single premium for the attained age (found in the single premium contract) multiplied by the guaranteed insurance amount under the contract. Using the same investment return assumption, the cash surrender value would always equal the tabular cash value. The relationship between the tabular cash value and the benefit base in such that at the end of the first contract year it equals 91% of the benefit base. At the end of each subsequent contract year it increases by 1% until at the end of the tenth year, and thereafter, it is always 100%. The CDSL will not exceed 9% of the single premium paid by the contractowner. It will apply upon the full surrender of a contract and upon an exchange of a contract for a fixed-benefit policy.

5. The language and the history of Rule 6e–2 anticipated variable life insurance contracts with CDSLs, and the sales load under the contracts is consistent with the rule in terms of amount and timing. Owners benefit from CDSLs in that the net amount invested is increased, and the elimination of the front-end sales load permits higher minimum death benefits for the same premium.

6. Sections 2(a)(35) and 27(h) contemplate a sales load that is deducted at the time payment for the securities is made, and Rule 6e–2, paragraphs (6)(1) and (c)(4) may not cover a CDSL. Applicants seek exemptive relief to permit such a sales load on the grounds that it is consistent with the intent of the 1940 Act and that the timing of the deduction does not change the basic nature of the charge, which is in every other respect a sales charge.

7. Applicants seek exemptive relief from sections 2(a)(32) and (27(c)(1) and from Rule 6e-2, paragraphs (b)(12) and (b)(13)(iv), to the extent that such provisions do not recognize a sales charge at redemption. Deferral of a sales load does not restrict to owner from receiving his proportionate value of the account on redemption.

8. Applicants request exemption from section 22(c) of the 1940 Act and from Rules 6e–2(b)(12) and 22c–1 to the extent necessary to permit a CDSL. Rule 6e–2(b)(12) was intended to afford exemptive relief from Rule 22c–1 with respect to redemption procedures in the context of variable life insurance, including surrender and exchange procedures, but Rule 6e–2(b)(12) could be read as not recognizing a CDSL. Rules 22c–1 was intended to minimize dilution of interests and unfair speculative trading. A CDSL would not have a dilutive effect and would actually discourage speculative short-term trading.

9. With regard to rule 6e–2(c)(1)(i), which defines "variable life insurance contract" in terms of cash surrender values which vary to reflect investment experience, the single premium contract provides for a cash surrender value that also varies. Applicants seek relief from section 22(d) and Rule 6e–2(b)(12)(ii), which concern uniform price requirements. Although the exemption afforded in the rule may not contemplate situations where separate accounts fund variable life insurance contracts, one with a front-end sales load and the other with a CDSL, any variation is reasonable, fair and non-discriminatory to the owners of the same class.

10. Applicants also request relief from section 27(h)(1) and Rules 6e–2(b)(1), (b)(13) and (c)(4) to the extent necessary to permit the use of the 1980 CSO Tables instead of the 1958 CSO Table to measure the cost of insurance charge in determining what is deemed to be sales load. Separate 1980 CSO Tables will be used in computing sales load for male and female insureds and these tables correspond to those guaranteed by the single premium contracts. The 1980 CSO Tables reflect more contemporary mortality assumptions and, in most cases, the use of these tables will result in lower cost of insurance deductions than would the use of the 1958 CSO Table. However, for owners between ages 17 and 22 inclusive, the 1980 CSO Tables result in higher cost for the purchase of insurance. In addition, Applicants request relief from sections 26(a)(1), 26(a)(2) and 27(c)(2) and Rule 6–2(b)(13)(iii) to permit the deduction of insurance charges from the benefit base value. The request for relief is consistent with amendments to Rule 6e–2 proposed in Investment Company Act Release 14421 (March 15, 1985).

11. Applicants request exemption from sections 22(e), 27(c)(1), and 27(f), and from Rules 6e–2(b)(12), (b)(13)(iv), (b)(13)(viii)(C), (c)(1)(i), and (c)(4), and 22c–1 and 27f–1 to the extent necessary to permit them to use the structure of cash surrender values under the contract. They also request exemption from 18(i) and Rule 6e–2(b)(10) to allow voting rights based on the value of the benefit base rather than the cash surrender value of the single premium contract. The calculation of the benefit base reflects the investment experience of the separate account to determine death benefits and cash surrenders values. Voting rights based on the owner's participation in the separate

account are the most appropriate way to determine voting rights.

Applicants' Conditions

Applicants represent they will conform to any rules and amendments the Commission may adopt under Rule 6e-2, or will seek exemptive relief from such amendments. They represent that they will not solicit or sell the BSL contract funded by BSL Accounts III or IV or the USL contract funded by USL Accounts I, II, III or IV until they receive the exemptive relief requested by this application. Applicants further agree that if the requested relief is granted such order will be expressly conditioned on Applicants' compliance with the undertakings set forth above.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-11467 Filed 5-20-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24392]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 14, 1987.

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 statements 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 June 8, 1987 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 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.

New England Power Company (70-7208)

New England Power Company ("NEP"), 25 Research Drive, Westborough, Massachusetts 01582, a wholly owned electric utility subsidiary of New England Eelctric System, a registered holding company, has filed a post-effective amendment to its declaration pursuant to sections 6(a) and 7, 9(a), 10 and 12(c) of the Act, and Rule 42 thereunder.

By order dated May 29, 1986 (HCAR No. 24115) NEP was authorized, among other things, to issued and sell up to $550 million of genral and refunding mortgage bonds ("G&R Bonds") for fefinancing purposes. NEP now proposes that it be authorized to issue and sell up to $35 million of the $550 million of G&R Bonds to finance its $35 million share of the construction of pollution control and solid waste disposal facilities for the Seabrook, New Hampshire nuclear project. The G&R Bonds would have a variable interest rate not in excess of 14% and would be issued simultaneously with, and on the same terms as, pollution revenue control bonds to be issued by the Industrial Development Authority of the State of New Hampshire.

Ohio Power Company, et al. (70-7387)

Ohio Power Company, ("Ohio Power"), a wholly owned electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Ohio Power's subsidiaries, Central Ohio Coal Company ("COCCo"), Southern Ohio Coal Company, and Windsor Power House Coal Company (collectively, "the coal mining subsidiaries") all of 1 Riverside Plaza, Columbus, Ohio 43215, have filed an application-declaration pursuant to sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

The coal mining subsidiaries propose to enter into a renewable master leasing agreement with a nonaffiliate, the Connecticut Bank and Trust Company ("Connecticut"), whereby Connecticut will lease to the coal mining subsidiaries, between July 1, 1987 and June 30, 1988, mining equipment with a total aggregate acquisition cost not exceeding $22,000,000. All cost of operation, maintenance, taxes, insurance and other costs are to be borne by the lessees.

Ohio Power will execute a guaranty agreement to unconditionally and irrevocably guarantee COCCo's payment obligations in connection with the lease in light of COCCo's partial assignment to nonaffiliates of revenues received under its coal supply agreement with Ohio Power.

Clearfield Ohio Holdings, Inc. (70-7390)

Clearfield Holdings, Inc. (the "Applicant"), Radnor Corporate Center 5, Suite 400, 100 Matsonford Road, Radnor, Pennsylvania 19087, has filed an application pursuant to sections 9(a) (2) and 10 of the Act.

Applicant is an Ohio corporation, organized in 1985, and a holding company claiming an exemption pursuant to section 3 (a)(1) of the Act and Rule 2 thereunder from all the provisions of the Act, except section 9(a)(2). Applicant owns all of the outstanding common stock of two gas distribution companies, Southeastern Natural Gas Company ("Southeastern") and Eastern Natural Gas Company ("Eastern"), both of which are Ohio corporations and provide a natural gas distribution services exclusively within the state of Ohio. Applicant has no other subsidiaries and is not a public-utility company itself.

Applicant proposes to acquire all of the outstanding shares of common stock, par value $3.00 per share, (the "Pike Shares"), of Pike Natural Gas Company ("Pike"), an Ohio corporation and a public-utility company within the meaning of the Act. The Acquisition is to be effect pursuant to a cash tender offer. The tender offer is not conditioned upon the receipt of tenders for a minimum number of shares.

Southeastern provides natural gas services to other utilities, to industrial customers for their own use, and to residential customers. It presently has approximately 50 customers. All gas is transmitted over leased lines in Washington, Athens, Morgan, Perry, Hocking, and Fairfield Counties, all in Ohio. At the present time, Southeastern owns no producing fields, gas manufacturing plants, or gas distribution facilities, other than certain service lines to residential customers. Eastern provides natural gas services through its own lines to approximately 5,700 residential, commercial, industrial, and public-utility customers, in Trumbull and Ashtabula Counties, Ohio. As the present time, Eastern owns no producing fields or gas manufacturing plants.

Pike, an Ohio corporation, provides natural gas services exclusively within the State of Ohio to approximately 5,300 residential, commercial, industrial, and public-authoirty customers in Clinton, Highland, Pike, Jackson, and Ross Counties. At the present time, Pike owns no producing fields; it owns two small propane peak shaving facilities. Pike's system is divided into two physically

spearate operations of approximately equal size. The Hillsboro Division, serving Highland and Clinton Counties, is supplied by Columbia Gas Transmission Corporation; the Waverly Division, serving Ross, Pike, and Jackson Counties, is supplied by Tennessee Gas Pipeline Company. Pike employs some 20 persons in the two divisions.

Applicant asserts that the acquisition will serve the public interest by tending towards the economical and efficient development of an intergrated public-utility system. It is stated that the economies resulting from the combination of the three companies as part of an integrated system will benefit investors and consumers. Applicant believes that its greater size and extensive contracts with Ohio producers may enable it to obtain gas supplies at a more favorable price than Eastern and Pike alone would be able to. Applicant expects to achieve significant operating economies in these operations by eliminating duplicated overhead activities and reducing Pike's operating work force. Applicant also expects that lower gas costs to customers will result.

The authorized capital stock of Pike consists of 450,000 shares of common stock, of which 84,711 shares were issued and outstanding on December 31, 1986. The Pike Shares were formerly registered with the Commission pursuant to the Securities Exchange Act of 1934 but were deregistered in 1984 when the number of shareholders was reduced to fewer than 300 as a result of a reverse stocksplit.

Applicant has entered into agreements with the three principal shareholders of Pike, The Ohio Company, Alice H. Reilly, and St. Clair Oil Company, who in the aggregate own 53,701 Pike Shares, or approximately 63% of the outstanding shares, pursuant to which such shareholders have agreed to tender their shares in response to the tender offer (the "Shareholder Agreements"). In addition, the board of directors of Pike has considered the terms of the proposed tender offer and has recommended that the other shareholders tender their Pike Shares in response to it. The Shareholder Agreements are the result of arms'-length negotiations. The terms of the tender offer were negotiated with the officers and directors of Pike and its investment banker. The price agreed upon was 125% of Pike's book value as at December 31, 1986, plus 125% of the increase in net book value through March 31, 1987, with a cap of $42 per share. The cap was reached, and the price of $42 per share being offered to the shareholders represents approximately 124% of Pike's book value as at March 31, 1987. Applicant states that the consideration, including all fees, commissions, and other remuneration paid in connection with the proposed acquisition, is reasonable and bears a fair relation to the earning capacity of the utility assets of Pike.

Applicant anticipates acquiring all of the Pike Shares pursuant to the Tender Offer but requests that the authorization extend to any subsequent acquisition by Applicant of Pike Shares in the event that not all Pike shareholders tender their shares pursuant to the tender offer. Applicant expects to acquire such Pike Shares in private transactions or as a result of the merger or other combination of Pike with Applicant of a subsidiary of Applicant.

Cal Gas Corporation (70–7391)

Cal Gas Corporation ("Cal Gas") P.O. Box 28397, 8401 Gerber Road, Sacramento, California 95828, has filed an application pursuant to section 2(a)(4) of the Act for an order declaring it not to be a gas utility company.

Section 2(a)(4) defines a gas utilituy company as "any company which owns or operates facilites used for the distribution at retail (other than distribution only in enclosed portable containers . . .) of natural or manufactured gas for heat, light, or power." That section also provides that the Commission may declare a company not to be a gas utility company if it "finds that (A) such company is primarily engaged in one or more businesses other than the business of a gas utility company, and (B) by reason of the small amount of natural or manufactured gas distributed at retail by such company it is not necessary in the public interest or for the protection of investors and consumers that such company be considered a gas utility company for the purposes of [the Act] . . . ."

Cal Gas is national marketer of liquefied petroleum gas ("LPG") to residential, commercial, industrial, and agricultural users throughout the United States. It distributes the LPG in enclosed portable containers. Cal Gas states that an insignificant portion of its sales involves the use of pipes or pipelines owned by the company which run from storage tanks on or near the customer's premises to the customer's home or business. The company purchases LPG from a variety of suppliers from around the country and moves the product through a nationwise distribution system that employs proprietary rail car and truck fleets as well as common carrier haulers. In addition, the company is involved in other activities related to the sale of LPG, such as equipment and applicance sales and commodities trading.

Cal Gas' revenues from operations other than retail fuel sales were $325,380,000 in 1986, comprising 62.29 percent of the company's revenues. These revenues were derived principally from Cal Gas' trading activities in the commodities markets. Other revenues stemmed from the company's gas processing, transportation, wholesale fuel, and equipment sales and leasing operations. The balance of Cal Gas' 1986 reavenues, $196,942,000 or 37.71 perceant, were from retail LPG sales. LPG is delivered in large tank trucks or smaller "bobtail" trucks to or near the customer's premises where the LPG is pumped into storage tanks. Sales also occur in small canisters or cylinders at retail station outlets. Customers whose storage tanks are not metered are billed on each delivery for the quantity of LPG delivered into the storage tank. Nonmetered sales, which were $185,874,158 in 1986, or 35.59 percent of total company sales, do not involve company pipes or pipelines.

Customers whose tanks are metered are billed for the LPG consumed according to meter readings. Metered sales were $11,068,093 in 1986 or 2.12 percent of total Cal Gas sales. These metered sales may involve the use of company-owned pipes or pipelines in the following ways.

First, pipes are used in metered sales to single family residences or single businesses. Under this method of delivery, LPG is deliverd to a tank on the customer's premises and passes through a short pipe to a meter at the customer's residence or business. The customer is billed for the amount of gas passing through the meter. Traditionally, the company owns the tank, the pipe leading to the residence, and the metering equipment.

Second, pipelines are used in sales to small residential subdivisions, mobile home parks, and mindustrial/commercial complexes. In each case, Cal Gas supplies LPG to a central tank, from which it flows through underground pipelines to individual customers where LPG usage is metered. Customarily, Cal Gas owns the central tank and the metering equipment and may own the pipelines leading to the customers' premises.

Third, Cal Gas pipes are sometimes used in sales to residents in apartment buildings. LPG is delivered to a central tank for the apartment building which, for safety reasons, is typically located a short distance from the building. The

LPG then flows to the building through a main pipe and then to individual apartments through branch pipes. Customarily, the company owns the central tank, the metering equipment, and, in some cases, the pipe leading to the apartment building, but it does not, in any case, own the pipes contained within the apartment building.

It is stated that although Cal Gas does not maintain separate data for sales involving distribution through company pipes or pipelines, such sales constitute only a portion of metered sales and that, in any event, total metered sales constitute only $11.068 million or 2.12 percent of the company's 1986 revenues. It is further stated, moreover, that 1986 revenues from metered sales include approximately $7.6 million in metered seles to nonresidential users of which many are industrial users. Finally, Cal gas believes that metered sales to single family homes and to apartment buildings fall within the enclosed portable container exception in section 2(a)(4) and has included them only because of the difficulty in separating them from other metered sales.

Consolidated Natural Gas Company, et al. (70–7393)

Consolidated Natural Gas Company ("Consolidated") a registered holding company, and its subsidiaries, Consolidated Natural Gas Service Company, Inc., CNG Coal Company, CNG Energy Company, CNG Research Company, Four Gateway Center, Pittsburgh, Pennsylvania 15222, The Peoples Natural Gas Company, Two Gateway Center, Pittsburgh, Pennsylvania 15222, Consolidated Gas Transmission Corporation, Consolidated System LNG Company, 445 West Main Street, Clarksburg, West Virginia 26301, CNG Producing Company, One Canal Place, Suite 3100, New Orleans, Louisiana 70130, West Ohio Gas Company, 504 Colonial Building, Lima, Ohio 45802, CNG Development Company, CNG Trading Company, One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244, The East Ohio Gas Company, The River Gas Company, 1717 East Ninth Street, Clevelend, Ohio 44115, and Hope Gas, Inc., Union National Center West, Clarksburg, West Virginia 26301 (collectively, "Subsidiary Companies"), have filed an application-declaration pursuant to sections 6(a), 6(b), 7, 9(a), 10, and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

Consolidated proposes, for intra-system financings through June 15, 1988: (1) to issue and sell up to $300 million of commercial paper to Merrill Lynch Money Market, Inc. or, alternatively, (2) to issue and sell up to $175 million unsucured short-term notes to banks, and (3) to make up to $560,500,000 in open account advances to the Subsidiary Companies. It is also proposed (i) that the Subsidiray Companies issue and Consolidated acquire up to $122,500,000 in long-term non-negotiable notes; (ii) that CNG Energy Company issue and Consolicated acquire long-term, non-negotiable notes up to $1.5 million; (iii) that Consolidated make revolving credit advances not to exceed $250 million to the Subsidiary Companies; (iv) that Consolidated purchase from, and CNG Coal Company CNG Development Company, CNG Producing Company and CNG Research Company issue, respectively, an aggregate of $41,100,000 million in common stock at $100 par value; and (v) that Consolidated purchase from CNG Trading Company up to 500 shares of common stock, $1.00 par, at $10,000 per share.

Sierra Pacific Resources (70–7408)

Sierra Pacific Resources ("Resources"), P.O. Box 30150, Reno, Nevada 89520, an exempt holding company, has filed an aplication pursuant to sections 9(a)(2) and 10 of the Act.

Resources purposes to acquire a 14.5% stock interest in a new company ("Enterprise") which is to be organized under the laws of the State of Nevada. Enterprise will construct and operate a 250 MW, coal-fired generating unit ("First Unit") to be located at the Thousand Springs Project ("Project") in Elko County in northeastern Nevada. Construction of the First Unit is scheduled to commence in 1989, with commercial operation expected to be in 1994. The Project may ultimately consist of the First Unit and seven other generating units, each of 250 MW.

In addition to Resources, there are then other participants ("Non-Utility Participants") in the Project that will acquire the remaining ownership interests. No one of the Non-Utility Participants will acquire more than a 9.5% interest in Enterprise. None of them will be a holding company as defined in section 2(a)(7)(A) of the Act. These Non-Utility Participants and Resources will advance funds on a pro rata basis in accordance with their respective percentage ownership interests for preliminary activities (the total cost of which is expected to be approximately $15,000,000) to be conducted prior to commencement of construction of the First Unit.

Construction of the First Unit will be financed on a project finance basis. It is presently anticipated that the construction of the First Unit will be financed on an interim basis through a construction loan from banks or other financial institutions in the approximate amount of $600,000,000, the estimated construction cost. It is anticipated that the construction loan will be refinanced on or about the commencement of commercial operation on a permanent basis through the commitments of all of the eleven participants, made at the commencement of construction, to contribute an aggregate of 25% of the costs as equity, with the balance of the required financing achieved through the issuance of debt of Enterprise, secured by a first lien on the First Unit.

Sierra Pacific Power Company ("Power Company"), presently Resources' only public-utility subsidiary company, is expected to purchase at wholesale 20% of the electric energy generated by the First Unit. Power Company is engaged in the generation, purchase, transmission, sale, and distribution of electric energy in the western, central, and northeastern parts of Nevada (including the City of Reno) and in the eastern part of California (in the Lake Tahoe area). Power Company also provides retail gas service in the cities of Reno and Sparks, Nevada, and environs. Generation above the 20% will be sold by Enterprise at wholesale to privately owned and publicly owned electric utilities for sale at retail to consumers in the Western states. Enterprise's rates and charges for the wholesale sales of electric energy to Power Company and the other utilities, as well as the wheeling rates charged by others, will be subject to regulation by the Federal Energy Regulatory Commission under the Federal Power Act. The sales at retail by the purchasers of the energy will be regulated by the appropriate state regulatory authority.

Concurrently with this application, a "no action" letter has been submitted separately to the staff of the Commission's Division of Investment Management regarding the status of each of the Non-Utility Participants as a holding company under section 2(a)(7)(B) of the Act. Further, Resources has filed an amendment to its exemption statement pursuant to Rule 2 under the Act to maintain its exemption as a holding company with Enterprise included.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR.Doc. 87–11608 Filed 5–20–87:8:45am]

BILLING CODE 8010-01-M

[Rel. No. IC-15744; 811-3776]

Tax-Exempt Equity Fund, Inc.; Application for Investment Company Deregistration

May 15, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Tax-Exempt Equity Fund, Inc.

Relevant 1940 Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on March 17, and amended on May 6, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interest person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 100 East Campus View Boulevard, Suite 390, Columbus, Ohio 43085.

FOR FURTHER INFORMATION CONTACT: Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application on Form N-8F is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations: 1. Applicant registered under the Act on Form 8-A on June 21, 1983, and filed a registration statement pursuant to section 8(b) of the Act of April 4, 1983. Such registration statement became effective September 9, 1983, and an initial public offering commenced immediately thereafter. However, no shares of Applicant were actually sold as described below.

2. Purusant to the terms of its public offering, Applicant placed all funds received from subscribers into an escrow account maintained by Bradford Trust Company (the "Escrow Agent"). Applicant was unable to sell the minumum number of shares required to terminate the escrow arrangement. Consequently, no shares of Applicant were ever sold and the funds deposited by subscribers were refunded in full, together with a proportionate share of any interest earned thereon, less any expenses attributable to receiving, holding and returning such funds. On December 9, 1983, the termination date of the offering, 1,004 subscribers had deposited $6,446,775 with the Escrow Agent. On December 22, 1983, the Escrow Ageny mailed checks to the subscribers aggregating $6,446,775 as a return of their subscription deposits.

3. On March 2, 1987, the sole director of Applicant gave its written consent to dissolve Applicant, adopt a plan of liquidation, distribute the remaining assets to the stockholders, and apply for an order pursuant to Section 8(f) of the 1940 Act declaring that Applicant has ceased to be an investment company. On the same date, the sole stockholder of Applicant gave its written consent for Applicant's dissloution and the filing of the application.

4. Applicant is a Delaware corporation currently in good standing under the laws of the State of Delaware. Concurrently with this application, Applicant filed a Certificate of Dissolution with the State of Delaware to authorize the dissolution, liquidation and winding-up of the affairs of the Applicant.

5. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which were or are security-holders of Applicant. In addition, Applicant has retained no assets, is not a party to any litigation or administrative proceeding, and is not now engaged and does not propose to engage in any business activities other than those necessary for winding up its affairs. Furthermore, Applicant incurred legal expenses in the amount of $1,000 in connection with its liquidation; such expenses were paid by its investment advisor.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-11676 Filed 5-20-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1080]

Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on June 11, 1987 in the first floor Theater, Communications Satellite Corporation, 950 L'Enfant Plaza, SW., Washington, DC. The meeting will begin at 9:30 a.m.

Study Group 4 deals with matters relating to systems of radiocommunications for the fixed service using satellites. The purpose of the meeting will be to continue the plan of work for the Study Group during the 1986-1990 period.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard Shrun, State Department, Washington, DC 20520; telephone (202) 647-2592.

Dated: May 12, 1987.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 87-11585 Filed 5-20-87; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1082]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT)—Study Group XVIII (non-ISDN) will meet on June 10, 1987 at 9:00 a.m. in Room 1207, Department of State, 2201 C Street, NW., Washington, DC.

The subjects to be discussed are as follows:

Speech processing, digital hierarchies and performance.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is

controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advice the office of Mr. Earl Barbely, State Department, Washington, DC.; telephone (202) 653–6102. All attendees must use the C Street entrance to the building.

Dated: May 12, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 87–11586 Filed 5–20–87; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1081]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 18, 1987 and July 22, 1987 at 9:30 a.m. in Room 1207, Department of State, 2201 C Street, NW., Washington, DC.

The purpose of the meeting is to discuss the status of the work on CCITT restructure in CCITT Special Study Group S to begin to establish U.S. positions for the final international meeting on the subject in November/December, 1987. There will be a series of meetings culminating in July 1987 on this matter.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 635–6102. All attendees must use the C Street entrance to the building.

Dated: May 12, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc. 87–11587 Filed 5–20–87; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flight Service Station at Dupage Airport West Chicago, IL; Closing

Notice is hereby given that on or about April 30, 1987, the present Flight Service Station at Chicago, Illinois, will be closed. Services to the general public of Chicago, Illinois Flight Plan Area, formerly provided by this office, will be provided by the New Automated Flight Service Station in Kankakee, Illinois. This information will be reflected in the FAA organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Des Plaines, Illinois, on May 15, 1987.

William H. Pollard,

Director, Great Lakes Region.

[FR Doc. 87–11588 Filed 5–20–87; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: San Mateo County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in San Mateo County, California.

FOR FURTHER INFORMATION CONTACT: D.L. EYRES, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Caltrans will prepare an environmental impact statement (EIS) on a proposal to widen State Route 92 in San Mateo County to provide necessary safety improvements. The study limits are from Route 1 in Half Moon Bay to Route 280 (Post Miles 0.0/7.3).

Possible project alternatives include the following:

- Two lanes from Route 1 to Pilarcitos Creek and two lanes with continuous uphill slow vehicle lanes between Pilarcitos Creek and I–280.
- Two lanes between Route 1 and Pilarcitos Creek and two lanes with continuous uphill and downhill slow vehicle lanes from Pilarcitos Creek to I–280. This four-lane section would include a median barrier.
- Do nothing or the No Build Alternative.

The proposed scoping process includes the distribution of the Notice of Preparation to each responsible agency, publication of the Notice of Intent in the National Register, and scoping meetings as needed. The next meeting is scheduled for Wednesday, June 17, 1987, at 7:00 p.m. in the Recital Studio, located in building #2, at the College of San Mateo, 1700 W. Hillsdale, Blvd. in San Mateo.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Program and activities apply to this program.

D. L. Eyres,

District Engineer, Sacramento, California.

[FR Doc. 87–11589 Filed 5–20–87; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; St. Charles County, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in St. Charles County, Missouri.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Anderson, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO 65102, Telephone Number 314–636–7104

Mr. James F. Roberts, Surveys and Plans Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2876.

SUPPLEMENTARY INFORMATION: (1) The proposed highway project will be a new fully access controlled right-of-way facility extending Route 115 west from Route 94 in St. Charles City through the Mississippi River bottom and roughly paralleling the existing Norfolk and Western Railway to a location on Route I–70 at or near the existing Missouri Highway and Transportation Department (MHTD) Official Weight Scales in the city of St. Peters.

(2) The proposed highway project is entirely on new alignment and will provide vehicular access to and from Route I–70 and the city of St. Charles to a new bridge over the Missouri River into St. Louis County. The proposed facility will provide a 24-foot pavement in each direction separated by a depressed 46-foot median. Five points of ingress and egress are proposed in the project's 7.75 miles length. The only other alternate being considered is the do-nothing alternate.

(3) The scoping process will be implemented following publication of this Notice of Intent in the **Federal Register.** A prelocation meeting will be advertised and conducted in accordance with FHWA and MHTD policies and procedures.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearing house review of Federal and federally assisted programs and projects apply to this program.)

Issued on: May 14, 1987.

Robert G. Anderson,

District Engineer, Jefferson City.

[FR Doc. 87–11624 Filed 5–20–87; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; St. Louis and St. Charles Counties, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in St. Louis and St. Charles Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Anderson, Federal Highway Administration, P.O. Box 1787, Jefferson City, Mo 65102, Telephone Number 314–636–7104.

Mr. James F. Roberts, Surveys and Plans Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2876.

SUPPLEMENTARY INFORMATION: (1) The project begins in St. Louis County at the terminus of present Rout D or Bennington Avenue extending northwesterly on new location to cross the Missouri River near Hemsath Road in St. Charles County to Route 94, then westerly along present Route 94 to Missouri Highway Route N and then on a new location to near the intersection of Missouri Highway Route N and Missouri Highway Route K. It then follows near Route N to its intersection with U.S. Highway 40–61.

The proposed project will consist of a six-lane controlled acess divided highway to Missouri Route N in St. Charles County and a four-lane controlled-access divided highway for the remaining part in St. Charles County. This improvement will serve to reduce the heavy traffic congestion on the Missouri River crossings between St. Louis and St. Charles Counties.

(2) Three alternates will be considered at the east end of the project near Creve Coeur Lake Memorial Park as well as two alternate crossings of the Missouri River. Three alternate locations for connection to Route 94 in St. Charles County will also be considered.

The "no build" alternative as well as the upgrading of existing facilities will be addressed.

(3) To date, a preliminary reconnaissance study has been furnished to local officials, legislators, and other interested parties. Presentation of the study has been made at the local level and input received. The scoping process will be initiated with Federal, State, and local agencies as the study progresses. Further public hearings will also be held.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: May 14, 1987

Robert G. Anderson,

District Engineer, Jefferson City.

[FR Doc. 87–11625 Filed 5–20–87; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

[Docket S–806]

Lykes Bros. Steamship Co., Inc.; Application To Incorporate the U.S. Pacific Coast as a Privilege on Trade Route 13 (U.S. Gulf and South Atlantic/Mediterranean) and as a Dual Service Privilege in Conjunction With Trade Route 22 (U.S. Gulf/Far East)

Lykes Bros. Steamship Co., Inc. (Lykes) by letter of May 4, 1987, requests that the U.S. Pacific coast be incorporated into its Operating-Differential Subsidy Agreement, Contract MA/MSB–451 as a privilege on its Line C, TR 13 (U.S. Gulf and South Atlantic/Mediterranean) service, and as a dual service privilege in conjunction with its Line D, TR 22 (U.S. Gulf/Far East) service. Lykes states that the first sailing with such a privilege would be the SS SUE LYKES (ex-PRESIDENT WILSON) of which it will take delivery from American President Lines, Ltd. (APL) in Seattle. On May 8, 1987, the Maritime Subsidy Board approved Lykes' application for one sailing only for the SUE LYKES, Voyage 1 to provide this privilege service.

In support of its request, Lykes states that there is currently no all-water U.S.-flag service offered from Pacific coast ports and the flexibility offered by breakbulk service would allow Lykes to position ships as needed to provide such a service. Vessels operating homebound from the Mediterranean could carry import cargo for the Pacific coast to position themselves for outward cargo. Vessels operating inbound on Line D from the Far East could stop to pick-up outbound Mediterranean cargo.

Lykes avers that there will be no subsidy impact since it would use existing vessels. Lykes believes that approval of its proposal is in keeping with the purposes and policies of the Merchant Marine Act, 1936, as amended (Act), since it will ensure that more cargo will move on U.S.-flag vessels. It will also add to the flexibility and viability of Lykes' conventional service.

Since no other line serves the Mediterranean from the Pacific coast, Lykes argues, there is no competitive implication and its proposal embraces the philosophy that spawned the idea to revise the trade route system.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington DC 20590. Comments must be received no later than 5:00 P.M. on June 22, 1987. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

Dated: May 18, 1987.

By Order of the Martime Subsidy Board.

James E. Saari,

Secretary

[FR Doc. 87–11674 Filed 5–20–87; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular; Public Debt Series—No. 14-87]

Treasury Notes of May 31, 1989, Series Y-1989

Washington, May 14, 1987.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Notes of May 31, 1989, Series Y-1989 (CUSIP No. 912827 UX 8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated June 1, 1987, and will accrue interest from that date, payable on a semiannual basis on November 30, 1987, and each subsequent 6 months on May 31 and November 30 through the date that the principal becomes payable. They will mature May 31, 1989, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Pulic Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, May 20, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 19, 1987, and received no later than Monday, June 1, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all other must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when

the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday, June 1, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, May 28, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, June 1, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in **Treasury Direct** are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in **Treasury Direct** must be completed to show all the information required thereon, or the **Treasury Direct** account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Bartlett A. Derrick,

Acting Fiscal Assistant Secretary.

[FR Doc. 87-11710 Filed 5-19-87; 11:17 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Cultural Property Advisory Committee; Subcommittee Meeting

A subcommittee of the Cultural Property Advisory Committee will conduct a meeting in Room 335, 301 4th Street, SW., Washington, DC on June 3, 1987.

The meeting will be closed to the public in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. 552 App. 2), the Government in the Sunshine Act (5 U.S.C. 552b), and the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 et seq.). The session will be closed because the discussion will involve investigative techniques and information the premature disclosure of which would be likely to frustrate significantly implementation of proposed actions and policies. Disclosure of information at this time identifying specific cultural property is likely to frustrate the imposition of import restrictions on such property. Also, the Committee will discuss recommendations to the President as to appropriate U.S. action regarding a request from the Government of El Salvador for a U.S. cultural property agreement with El Salvador under the terms of the Cultural Property Implementation Act. (5 U.S.C. 552b(c)(1), 5 U.S.C. 552b(c)(2), 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605).

Dated: May 15, 1987.

Marvin L. Stone,

Acting Director, United States Information Agency.

[FR Doc. 87-11662 filed 5-20-87; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 98
Thursday, May 21, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:31 a.m. on Monday, May 18, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of certain insured banks; Names and locations of banks authorized to be exempt from disclosure pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 19, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson;

Executive Secretary.

FR Doc. 87-11756 Filed 5-19-87; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Tuesday, May 26, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed Board comments on legislation regarding delayed funds availability (H.R. 28 and S. 79).
2. Federal Reserve Bank and Branch director appointments.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 19, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-11704 Filed 5-19-87; 10:48 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, May 27, 1987.

PLACE: Marriner S. Eccles Federal Reserve Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Fedreal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 19, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-11778 Filed 5-19-87; 3:30 pm]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [52 FR 18645 May 8, 1987].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, May 13, 1987.

CHANGE IN THE MEETING: Additional item.

The following item will be considered at an open meeting for Thursday, May 21, 1987, at 1:00 p.m.

Consideration of whether to issue a release publishing for public comment proposed amendments: (1) To eliminate filing requirements for preliminary proxy and information statements under certain circumstances and (2) to make clarifying and other changes to Rule 14a-8, the shareholders proposal rule. For further information, please contact Caroline W. Dixon or Barbara J. Green at (202) 272-2589.

Commissioner Peters, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Morris at (202) 272-3085.

Jonathan G. Katz,

Secretary.

May 19, 1987.

[FR Doc. 87-11792 Filed 5-19-87; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [52 FR 18645 May 8, 1987].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, May 13, 1987.

CHANGE IN THE MEETING: Additional item.

The following item will be considered at an open meeting for Thursday, May 21, 1987, at 1:00 p.m.

Consideration of whether to amend the Commission's Rules of Practice relating to general organization and

program management. The amendment will give delegated authority to the Director of the Division of Market Regulation to grant exemptive orders pursuant to Rule 10b–7(o) under the Securities Exchange Act of 1934 ("Exchange Act"). The Commission also will consider a technical corrective amendment to the rule delegating exemptive authority to the Director of the Division of Market Regulation with respect to Rule 10b–6 under the Exchange Act. For further information, please contact Elizabeth Jacobs at (202) 272–2848.

Commissioner Peters, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Morris at (202) 272–3085.

Jonathan G. Katz,

Secretary.

May 19, 1987.

[FR Doc. 87–11811 Filed 5–19–87; 5:08 pm]

BILLING CODE 8010–01–M

Federal Register

Thursday
May 21, 1987

Part II

Office of Personnel Management

5 CFR Part 846

Federal Employees Retirement System; Electing Coverage; Interim Regulations With Request for Comments

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 846

Federal Employees Retirement System; Electing Coverage

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the provisions of the Federal Employees' Retirement System (FERS) Act of 1986 (as amended by the Federal Employees' Retirement System Technical Corrections Act of 1986) allowing employees to transfer from the Civil Service Retirement System (CSRS) to FERS. These regulations identify the employees who may transfer to FERS, give the time periods when they may make elections to transfer, and set forth the method of computing the annuities of employees who transfer.

DATES: Interim regulations are effective June 30, 1987. Comments must be received on or before July 20, 1987.

ADDRESS: Send comments to Frank D. Titus, Director, FERS Implementation Task Force, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 884, Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margaret Sears, (202) 632–5560.

SUPPLEMENTARY INFORMATION: Under the FERS (Pub. L. 99–335) employees who are covered by CSRS and certain others who have performed service that is creditable under CSRS may elect to change to the new retirement system. These regulations give the circumstances under which employees may elect FERS coverage and explain how their old service is credited under the new system.

I. Elections

The law provides that employees who are covered under CSRS on June 30, 1987, may elect to transfer to FERS during the open season from July 1 through December 31, 1987. In addition, certain officials who were brought under social security coverage on January 1, 1984, by the Social Security Amendments of 1983 and who elected not to be covered by CSRS may elect FERS coverage during the open season if they continued to hold the same type of position through December 31, 1986. (Such officials and similar officials who elected full CSRS coverage may instead elect coverage under CSRS offset provisions.)

These regulations also provide for elections by persons who are not covered by CSRS on June 30, 1987. When these persons later become covered by CSRS (either because they are rehired or because they are converted to CSRS coverage) they have 6 months to elect FERS coverage. In addition, employees who are excluded from CSRS by regulation but are not excluded from FERS by regulation are deemed eligible to elect FERS coverage.

Certain employees are not eligible to convert to FERS because their employment is not subject to FERS coverage. For example, employees of the District of Columbia government may not elect FERS coverage even though they have CSRS coverage.

Employees who have former spouses who are entitled to a portion of their retirement benefit or to survivor benefits based on the employee's service must have the consent of the former spouse in order to elect FERS coverage. The regulations provide for an extension of the election period for employees who need extra time to obtain modifications of court orders so that they can obtain the former spouse's consent to the election. The regulations also provide for a waiver of the consent requirement when the former spouse's whereabouts are unknown or when some other circumstance makes the requirement unreasonable.

Elections of FERS coverage are effective with the first pay period beginning after the employing office receives the election. Thus, coverage for employees who make elections at the beginning of the open season will begin promptly rather than being postponed until the open season ends.

II. Employing Agency Responsibilities

These regulations make clear that it is the agencies' responsibility to insure that every eligible employee receives an election form and to document receipt of the election form in the employee's personnel folder.

III. Belated Elections and Correction of Administrative Errors

These regulations provide that agencies may accept a belated election of FERS coverage up to 6 months after an employee's election opportunity ends in cases where the FERS transfer handbook (issued by OPM) is not available to the employee in a timely manner or the employee is unable to make an election due to a cause beyond his or her control. Employing offices may also make prospective corrections of administrative errors regarding an employee's opportunity to elect FERS coverage within 6 months after the individual's election opportunity ends. For example, if an employee shows that he or she was not notified of the opportunity to elect FERS coverage, the agency can accept the employee's election of FERS coverage after the 6-month period has passed. However, coverage under FERS cannot begin before the pay period beginning after the employing agency receives the election form.

IV. Reconsideration and Appeals Rights

Under these regulations, an employee who is dissatisfied with an agency decision about accepting the employee's election or the effective date of the election may request that OPM review the agency's decision. OPM's decision after reviewing the agency decision may be appealed to the Merit Systems Protection Board. The law provides that an election of FERS coverage is irrevocable.

V. Effect of an Election of FERS Coverage

A. *Credit for service (general).* Under the FERS Act of 1986, an employee who elects FERS coverage becomes subject to all provisions of law related to FERS; however, the employee's service before the election may be credited under FERS only as specified by title 3 of the FERS Act of 1986. Generally, all of the employee's prior service that was creditable under CSRS provisions is creditable toward length of service requirements for title to an annuity under FERS. Credit for prior service in computing a basic annuity under FERS depends on the type and amount of service before the election to transfer.

B. *Service subject to both CSRS and social security.* For computation purposes, civilian service performed before FERS coverage begins which is subject to both CSRS deductions (generally at 1.3 percent of pay) and social security deductions is generally creditable under FERS. However, the employee must pay 1.3 percent of basic pay (or the withholding rate under FERS, if different) into the retirement fund if deductions were not made from pay or if they were made and later refunded. This provision applies only to service performed after December 31, 1983, which was subject to both CSRS and social security deductions. Federal service subject only to CSRS deductions or only to social security deductions is creditable as described in the following paragraph, regardless of when it was performed.

C. *"All FERS" computation.* Crediting civilian service that was performed before the effective date of the election and that was subject to either CSRS or social security, but not both, depends on the length of such service. If the total amount of such service is less than 5 years, the service is creditable under FERS for computation purposes. Generally, any military service the employee may have is also creditable under the FERS computation. However, any applicable deposit must be made to the retirement fund for the service before it can actually be credited. (In most cases, when a retiring employee who owes a deposit for civilian service elects an alternative form of annuity, OPM will deem the deposit to have been made.) If the employee has already paid a deposit under CSRS for the military service or if full CSRS deductions were made from pay during all or some of the civilian service, the employee can get a refund of the difference between the amount paid at the CSRS rate and the amount due for the service at the FERS rate. OPM will issue guidance separately explaining how employees may obtain this refund.

In most cases, transferring employees whose entire service is creditable under FERS computation rules can make deposits for service performed before they transferred, including deposits for service refunded to the individual during a period of separation occurring after transfer to FERS. However, an individual who, after transferring to FERS, receives (1) a full refund for a period of service that was subject to full CSRS deductions, or (2) a refund of a deposit for a period of nondeduction service, may not make a deposit for that service. Also, there is no provision under the FERS Act of 1986 whereby a former Federal employee who becomes subject to FERS after 1988 may make a deposit for temporary Federal service performed after 1988.

D. *"Combined" CSRS/FERS benefit computation.* Civilian service performed before the effective date of FERS coverage that was subject to either CSRS or social security, but not both, totaling 5 or more years, is generally computed under CSRS provisions for benefit purposes. Benefits for prior military service in such cases are also computed under CSRS provisions. Benefits for service after the effective date of the election of FERS and any service subject to both CSRS and social security are computed under FERS provisions. The annuity resulting from combining the two computations is considered a basic annuity under FERS. Disability benefits and survivor benefits are determined under FERS regardless of the length of service or when it was performed (subject to the 18-month civilian service requirement for entitlement). However, when a basic annuity is computed under the FERS disability or survivor provisions it is computed as described above, based on the amount and type of service.

The civilian service subject to CSRS computation is creditable toward the minimum length of service required for entitlement to any type of annuity under FERS, except that only service as a law enforcement officer, firefighter, or air traffic controller can be counted toward entitlement to the special annuity provisions for those professions. Such prior CSRS service also counts toward the 20-year requirement for mandatory separation purposes. However, prior CSRS service is not included in the 20 years of service subject to a 1.7 percent computation rate under FERS.

The average pay for both FERS and CSRS portions of the annuity is the average for the highest 3 consecutive years of service, regardless of whether the service was subject to computation under FERS or CSRS provisions. Since the high-3 average salary generally occurs during an employee's last 3 years of service, the average pay used in computing the CSRS portion of the annuity may cover a period of service that is partially or wholly subject to FERS.

The portion of the annuity computed under CSRS provisions includes credit for sick leave. However, the amount of credit is limited to the lesser of the amount of accrued sick leave available for use when an employee transfers to FERS or the amount at retirement.

These regulations clarify how "combined" annuities are reduced for age. When an employee retires under a FERS provision that requires a reduction for age, the reduction applies to the entire annuity, not just the portion computed under FERS provisions. However, when a FERS provision does not require a reduction for age and the CSRS counterpart does require an age reduction, only the portion of the annuity computed under CSRS provisions is reduced.

The cost-of-living provisions under CSRS apply to the portion of the annuity computed under CSRS, while FERS cost-of-living provisions apply to the portion of the annuity computed under the FERS provisions. Basic annuities for surviving spouses (or former spouses) of deceased annuitants include any cost-of-living increases that the annuitant received.

An annuity supplement due a retiree under FERS (if any) is computed as if the civilian service used in the FERS portion of the basic annuity computation were the retiree's only Federal service.

These regulations also clarify that when the alternative form of annuity is computed for a basic annuity that is a "combined" benefit, the alternative form of annuity is also a "combined" benefit, with each portion computed under the appropriate CSRS or FERS provisions.

E. *Voluntary contribution accounts.* Individuals who have voluntary contribution accounts under CSRS and who elect FERS coverage cannot continue to make payments to their accounts because FERS has no provision for such accounts. Employees may withdraw their voluntary contributions at any time or may leave them to earn interest until they retire under FERS. At that time these accounts may be used to purchase additional annuity as if the employee had remained subject to CSRS.

F. *Disability retirement.* The disability retirement requirements under FERS are similar to those under CSRS (except that only 18 months of service is required under FERS); however, the computation of benefits is quite different. Unless an employee is eligible for an immediate unreduced voluntary retirement benefit or is age 62 or older at the time of retirement for disability, the FERS benefit for the first year of disability is generally 60 percent of the high-3 average pay less 100 percent of an "assumed" social security disability benefit if the annuitant is or becomes entitled to a social security disability benefit. After the first year, the benefit is generally 40 percent of the average salary less 60 percent of the "assumed" social security disability benefit (if any). At age 62, the annuity payable to the disability annuitant is reduced for the "assumed" social security benefit (regardless of whether the individual is entitled to a social security benefit), unless the following computation produces a *lower* benefit: A basic annuity computation under FERS with the employee's high-3 average salary increased by the cost-of-living adjustments that occurred since retirement and the employee's years of FERS service extended to age 62, plus any benefits accrued on CSRS service (using the same average salary as for the FERS portion). However, in no case is the disability benefit less than the basic annuity benefit the employee had earned (including the portion computed under CSRS).

G. *Death benefits.* If an employee changes to FERS and later dies in service, any survivor benefits are paid under FERS provisions. If, at the time of

death, the employee's marriage had lasted at least 9 months and he or she had at least 18 months of civilian service, the surviving spouse would be entitled to a payment of 50 percent of the deceased employee's final pay (or average pay, if higher) plus $15,000. (The $15,000 amount will be increased by the amount of cost-of-living adjustments made under CSRS after January 1, 1987, the effective date of the FERS Act of 1986.) If the employee had 10 years of service (including any prior CSRS service), the surviving spouse would also be entitled to an annuity in the amount of 50 percent of the basic annuity the employee had earned by the time of death. If the deceased employee had less than 10 years of service, no survivor annuity is payable to a spouse or former spouse.

Eligible children of deceased employees are entitled to survivor annuities if the employee had at least 18 months of civilian service.

An individual who transfers to FERS and is married at retirement will receive a reduced annuity with a survivor benefit for the spouse unless the spouse waives his or her right to survivor benefits. The retiree's basic annuity would be reduced 10 percent to provide a survivor benefit of 50 percent of the retiree's annuity rate before the reduction. If the employee's basic annuity was computed with combined CSRS/FERS service, the 10-percent reduction would be applied to the entire annuity, not just the portion computed under FERS rules. In the case of a disability annuitant who dies before reaching age 62, the survivor benefit is 50 percent of the amount the retiree would have received as a basic annuity if he or she had been age 62 on the date of death, except that credit is allowed for the length of time between the date of death and the date the retiree would have reached age 62.

FERS supplemental survivor annuities are available only to spouses of deceased retirees, and only if the retiree had earned enough social security credit for the spouse to be entitled to social security survivor benefits. The supplemental survivor annuity is not payable if the spouse is actually eligible to receive social security payments based on the earnings of the deceased retiree. The amount of the supplemental survivor annuity is the lesser of (1) the amount by which the survivor benefit, computed as if the retiree had retired under CSRS, exceeds the FERS survivor benefit, and (2) the amount of the social security survivor benefit.

A former spouse may receive all or a portion of the survivor benefit that would otherwise be payable to a current spouse if a qualifying court order awards this benefit to the former spouse.

The amount of survivor annuity payable to each surviving child is the difference between the total amount of all surviving children's benefits under CSRS provisions and the total amount payable for all surviving children under social security, divided by the number of children. However, children's annuities must be reduced by the amount of children's benefits paid by social security.

Any balance left in an individual's retirement account when he or she dies and there are no survivors eligible for an annuity (or after any survivor annuities payable have ended) is payable under FERS provisions.

H. *Reemployed CSRS annuitants who transfer to FERS.* Under the law, when reemployed CSRS annuitants elect FERS coverage, the CSRS annuity stops with the effective date of the election. These regulations clarify how benefits for service prior to the election of FERS are computed. Generally, the CSRS portion of the "combined" benefit is computed as if the person had simply quit the reemployment on the day before FERS coverage began. However, the CSRS portion would be computed without (1) reduction to provide survivor benefits, (2) the 50-percent guaranteed minimum for air traffic controllers, and (3) credit for service covered by both CSRS and social security. Unless the CSRS portion represents an annuity redetermination under CSRS, the CSRS portion based on the original retirement date is increased by the total percentage of cost-of-living adjustments the person received as a CSRS annuitant; then any supplemental annuity due the person is added. The FERS portion of the annuity includes any service during which the person had both CSRS and social security coverage.

I. *Designation of beneficiary.* These regulations provide for cancelling any existing designation of beneficiary of an employee who transfers to FERS coverage. An employee who wants to designate a beneficiary for his or her retirement account must make the designation in a form prescribed by OPM. The designation applies to a lump-sum payment of all monies in the person's retirement account, whether they were withheld from or deposited by the employee under CSRS provisions or FERS provisions, or deposited for military or civilian service credit. The designation also applies to any annuity accrued but unpaid at the time a FERS annuitant dies.

J. *Refunds of CSRS contributions.* Under the FERS Act of 1986, an individual who elects FERS coverage is entitled to a refund of excess contributions (deductions, deposits, or redeposits) for service that is subject to computation under FERS provisions. Excess contributions occur in cases where the contributions were made at the full CSRS rate (usually 7 percent of pay). The refund consists of the difference between the amount of contributions made at the CSRS rate and the amount due at the FERS rate, including interest.

An employee who separates from service and who is not entitled to an immediate annuity may obtain a refund of all contributions or of CSRS contributions only. If the employee is later reemployed, he or she may make a redeposit for service subject to computation under CSRS and for service that was subject to both CSRS and social security deductions, but cannot make a redeposit for other service subject to FERS computation.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. OPM must issue regulations to implement an entire new retirement system that was effective January 1, 1987. In addition, clear rules must be in place to allow preparation of materials and world-wide distribution of them to employees who are eligible to elect FERS coverage during the "open season" between July 1 and December 31, 1987. These tasks, along with the necessity to prepare, publish, and distribute necessary forms and informational materials make it impractical to publish proposed rules.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect Federal employees and agencies only.

List of Subjects in 5 CFR Part 846

Administrative practice and procedure, Government employees, Pensions, Retirement.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Title 5 of the Code of Federal Regulation to add Part 846 to read as follows:

PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—ELECTING COVERAGE

Subpart A—General Provisions

Sec.
846.101 Purpose.
846.102 Definitions.

Subpart B—Elections

846.201 Elections to become subject to FERS.
846.202 Condition for making an election.
846.203 Agency responsibilities.
846.204 Belated elections and correction of administrative errors.
846.205 Reconsideration and appeal rights.

Subpart C—Effect of an Election to Become Subject to FERS

846.301 General rules.
846.302 Crediting civilian service.
846.303 Crediting military service.
846.304 Computing FERS annuities for persons with CSRS service.
846.305 Special rules regarding reemployed annuitants.
846.306 General inapplicability of CSRS provisions.

Subpart D—Refunds of CSRS Contributions.

846.401 Refunds of excess contributions.
846.402 Refunds of all CSRS contributions.

Subpart E—Cancellation of Designations of Beneficiary

846.501 Cancellation upon transfer to FERS.

Authority: 5 U.S.C. 8461(g); § 846.202 also issued under section 301(d)(3) of Pub. L. 99-335.

Subpart A—General Provisions

§ 846.101 Purpose.

This part identifies the employees who may transfer to the Federal Employees Retirement System (FERS), gives the conditions under which they may transfer, and sets forth the method of computing the annuities of employees who transfer to FERS.

§ 846.102 Definitions.

In this part—

CSRS means subchapter III of chapter 83 of title 5, United States Code.

CSRS/SS service means service subject to both CSRS deductions (or deductions under another retirement system for Federal employees if such service is creditable under CSRS) and social security deductions as a result of the Social Security Amendments of 1983. For this purpose, the service of an individual is considered CSRS/SS service if the service would have been covered under CSRS except for an election under section 208(a)(1)(A) of the Federal Employees Retirement Contribution Temporary Adjustment Act of 1983 to have no CSRS coverage.

Employee means an employee as defined by § 842.102 of this chapter.

Employing office means the office of an agency to which jurisdiction and responsibility for retirement matters for an employee have been delegated.

FERS means the Federal Employees Retirement System as described in chapter 84 of title 5, United States Code.

Former spouse means a former spouse as defined in § 831.1703 of this chapter.

Member means a Member of Congress as defined in section 2106 of title 5, United States Code.

OPM means the Office of Personnel Management.

Qualifying court order means a court order as defined by § 831.1703 of this chapter that meets the requirements of § 831.1704 of this chapter.

Social security means coverage under the Old Age, Survivors, and Disability Insurance programs of the Social Security Act.

Subpart B—Elections

§ 846.201 Elections to become subject to FERS.

(a) *Employees and Members subject to CSRS on June 30, 1987.* An individual who, on June 30, 1987, is employed in the Federal service or is a Member and who is covered by CSRS may elect to become subject to FERS. An election under this paragraph may not be made before July 1, 1987, or after December 31, 1987.

(b) *Separated employees who are reemployed.* A former employee who, after June 30, 1987, becomes reemployed and subject to CSRS may elect, during the 6-month period beginning on the date he or she becomes subject to CSRS, to become subject to FERS.

(c) *Employees and Members not subject to CSRS.* (1) An employee or Member who is excluded from FERS coverage on January 1, 1987, by § 842.104 (d) or (f) of this chapter and who, on December 31, 1986, is not subject to CSRS may elect to become subject to FERS. An election under this paragraph (c)(1) may not be made before July 1, 1987, or after December 31, 1987.

(2) An employee who, on June 30, 1987, is not covered by CSRS, but later becomes so covered, may elect to become subject to FERS. An election under this paragraph (c)(2) must be made during the 6-month period beginning on the date he or she becomes subject to CSRS.

(3) An employee who would be subject to CSRS except for the exclusions in § 831.201 of this chapter, but is not excluded from FERS by 5 U.S.C. 8401 nor by § 842.105 of this chapter, is deemed eligible to make an election of FERS coverage under this section. An election under this paragraph (c)(3) must be made during the period beginning July 1, 1987, and ending December 31, 1987, or, if later, during the 6-month period beginning on the date the employment described in this paragraph (c)(3) begins.

(d) *Exceptions.* (1) An individual who is an employee of the government of the District of Columbia may not elect to become subject to FERS.

(2) A Member who has irrevocably elected, by written notice to the official by whom the Member is paid, not to participate in FERS may not elect to become subject to FERS during the same continuous period of service.

(3) An employee or reemployed annuitant whose appointment is excluded from FERS coverage by law or regulation may not become subject to FERS by reason of an election under this section except as specified in paragraph (c) of this section or as otherwise provided by law.

(4) An election under this section may not be made by an individual who is ineligible for social security coverage.

(e) *Effective date.* An election made under this section is effective with the first pay period beginning after the date the election is properly filed with the employing office.

(f) *Irrevocability.* An election made under this section is irrevocable.

§ 846.202 Condition for making an election.

(a) An election under § 846.201 of this part may not become effective unless the election is made with the written consent of any former spouse(s) entitled to benefits under Part 831, Subpart F or Q of this chapter. As provided in section 301(d)(2)(A) of the FERS Act of 1986, this section applies only if OPM has been duly notified concerning any qualifying court order and has received the documentation required in § 831.1705 of this chapter. This section does not apply with respect to a former spouse who has ceased to be so entitled because of remarrying before age 55.

(b) OPM may waive the requirement of paragraph (a) of this section upon a showing that the former spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

(1) A judicial or administrative determination that the former spouse's whereabouts cannot be determined; or

(2)(i) Affidavits by the employee or Member and two other persons, at least one of whom is not related to the employee or Member, attesting to the inability to locate the former spouse and

stating the efforts made to locate the spouse; and

(ii) Documentary corroboration such as newspaper reports about the former spouse's disappearance.

(c) OPM may waive the requirement of paragraph (a) of this section based on exceptional circumstances if the employee or Member presents a judicial determination regarding the former spouse that would warrant waiver of the consent requirement based on exceptional circumstances.

(d)(1) OPM shall, upon application of an individual, grant an extension for such individual to make an election under § 846.201 of this part, if the individual—

(i) Files an application for the extension with OPM before the end of the period during which the individual would otherwise be eligible to make the election; and

(ii) Demonstrates to OPM's satisfaction that the extension is needed to secure the modification of a decree of divorce or annulment (or court ordered or court-approved property settlement incident to any such decree) on file at OPM in order to satisfy the consent requirement under paragraph (a) of this section.

(2) The application for extension is deemed to be filed with OPM on the date it is received in the employing office.

(3) An extension granted under this paragraph expires 6 months after the date it was granted. OPM may grant one further extension upon application by the individual seeking to make an election of FERS coverage.

(e) An electing individual who has a former spouse who may be entitled to benefits as described in paragraph (a) of this section must submit with the election either—

(1) The consent of the former spouse in a form prescribed by OPM,

(2) A request for an extension as described in paragraph (f) of this section,

(3) A request for a waiver of the consent requirement and the documentation to support the request as described in paragraph (d) or (e) of this section, or

(4) A request for a determination as to whether a qualifying court order as described in paragraph (a) of this section is on file with OPM.

(f) The request for waiver or extension described in paragraphs (b), (c), and (d) of this section must be in a form prescribed by OPM. The employing office must forward the request to OPM promptly.

(g) If OPM does not have a copy of a qualifying court order in its possession, OPM's notice to the agency that it has no qualifying court order is deemed to complete the individual's election of FERS, which becomes effective with the first pay period after the employing office receives OPM's notification.

(h) If OPM has a copy of a qualifying court order, OPM will notify both the individual and the employing agency of its determination regarding a request for extension.

(i) If OPM has a copy of a qualifying court order in its possession and grants a waiver of the requirement of paragraph (a) of this section, OPM will notify both the individual and the employing office of its decision. OPM's notice to the employing office is deemed to complete the individual's election, which becomes effective with the first pay period after the employing office receives OPM's notice that the waiver is granted.

§ 846.203 Agency responsibilities.

(a) Employing offices must distribute the election forms provided by OPM to each eligible individual, including all individuals in a nonduty status.

(b) An employing office must obtain documentation of the individual's receipt of the election form specified in paragraph (a) of this section and retain the documentation permanently in the individual's official personnel folder (or the equivalent). Acceptable documentation includes—

(1) A statement of receipt signed by the individual, or

(2) A signed postal return receipt showing that the election form was received at the individual's address.

§ 846.204 Belated elections and correction of administrative errors.

(a) *Belated elections.* On determination by an employing office that the FERS transfer handbook issued by OPM was not available to an individual in a timely manner or an individual was unable, for cause beyond his or her control, to elect FERS coverage within the prescribed time limit, the employing office may, within 6 months after the expiration of the individual's opportunity to elect FERS coverage under § 846.201, accept the individual's election of FERS coverage.

(b) *Correction of administrative errors related to election.* During the 6-month period after the expiration of an individual's opportunity to elect FERS coverage under § 846.201, the employing office may make prospective corrections of administrative errors regarding an individual's opportunity to elect FERS coverage, including failure to provide the election form specified in § 846.203(a) to an individual.

(c) *OPM's reconsideration.* An agency decision concerning an individual's opportunity to elect FERS coverage or the effective date of an election of FERS coverage is subject to reconsideration by OPM under § 846.205.

(d) *Correction of other administrative errors.* Failure to begin employee deductions and Government contributions on the effective date of coverage must be corrected in accordance with § 841.505 of this chapter.

§ 846.205 Reconsideration and appeal rights.

(a) *Who may file.* An individual may request OPM to reconsider a decision of an employing office affecting his or her election of coverage under FERS. A request for reconsideration of a decision by OPM regarding extension of the time limit or a waiver under § 846.202 or refunds under § 846.401 must be made in accordance with § 841.305 of this chapter.

(b) *Reconsideration.* A request for reconsideration of an agency decision must be filed within the time limit given in paragraph (c) of this section. A request for reconsideration must be made in writing and must include the claimant's name, address, date of birth, and the reason for the request.

(c) *Time limit.* A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the agency's decision stating the right to reconsideration. OPM may extend the time limit on filing when a person shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

(d) *OPM's decision.* After reconsideration, OPM issues its final decision in writing, setting forth its findings and conclusions.

(e) *Appeals to MSPB.* A person whose rights or interests under this part are affected by OPM's decision under paragraph (d) of this section may request the Merit Systems Protection Board (MSPB) to review such decision in accord with procedures prescribed by MSPB.

Subpart C—Effect of an Election to Become Subject to FERS

§ 846.301 General rules.

(a) An individual who becomes covered by FERS as a result of an election under § 846.201 is subject to the provisions of chapter 84 of title 5, United States Code and Parts 841 through 845 of

this chapter, except as provided in this part.

(b) Civilian service performed before the effective date of the election under § 846.201 is not creditable under FERS except as provided in this part.

§ 846.302 Crediting civilian service.

(a) Civilian service performed before the effective date of FERS coverage which is CSRS/SS service is creditable under FERS if—

(1) For service performed before January 1, 1987, 1.3 percent of basic pay was withheld as CSRS deductions (or if not withheld or if withheld and later refunded, 1.3 percent of basic pay for the period is deposited with interest computed under § 831.105(e) of this chapter); and

(2) For service performed after December 31, 1986, and before the effective date of the election, the employee contributes an amount equal to the percentage of basic pay for such service required to be withheld under Part 841, Subpart E of this chapter, whether by withholdings from pay or by later deposit (if not withheld or withheld and later refunded) with interest computed under § 831.105(e) of this chapter.

(b) Civilian service performed before the effective date of the FERS coverage which is not CSRS/SS service is creditable under FERS (subject to the deposit requirements of Part 842, Subpart C of this chapter) if—

(1) The service would be creditable under CSRS except for § 846.306 (determined without regard to whether the service was performed before, on, or after January 1, 1989, and without regard to the provisions of Part 842, Subpart C of this chapter requiring that deposit be made for nondeduction or refunded service to be credited); and

(2) The service, in the aggregate, is equal to less than 5 years.

(c) Civilian service performed before the effective date of FERS coverage which is not CSRS/SS service is creditable under FERS only for the purposes specified in paragraph (d) of this section if—

(1) The service would be creditable under CSRS except for § 846.306 (determined without regard to whether the service was performed before, on, or after January 1, 1989, and without regard to the provisions of Part 842, Subpart C of this chapter, requiring that deposit be made for nondeduction or refunded service to be credited); and

(2) The service, in the aggregate, is equal to 5 years or more.

(d) The service described in paragraph (c) of this section is creditable under FERS for the following purposes:

(1) The 5 years of civilian service required to be eligible for a basic annuity under FERS as set forth in § 842.203 of this chapter.

(2) The minimum period of service for entitlement to—

(i) An immediate voluntary annuity under FERS as set forth in § 842.204 of this chapter;

(ii) An early retirement under FERS as set forth in § 842.205 of this chapter;

(iii) An involuntary retirement under FERS as set forth in § 842.206 of this chapter;

(iv) A Member retirement under FERS as set forth in § 842.209 of this chapter;

(v) A military reserve technician retirement under FERS as set forth in § 842.210 of this chapter;

(vi) A Senior Executive Service, Defense Intelligence Senior Executive Service, or Senior Cryptological Executive Service retirement under FERS as set forth under § 842.211 of this chapter;

(vii) A deferred annuity under FERS as set forth in § 842.212 of this chapter;

(viii) A survivor annuity under FERS based on the death in service of an employee with at least 10 years of service as set forth in § 843.310 of this chapter, but only if the survivor is entitled to the basic employee death benefit described in § 843.309 of this chapter;

(ix) A disability retirement under FERS as set forth in Subchapter V of Chapter 84 of Title 5 United States Code;

(x) A firefighter or law enforcement annuity under FERS as set forth in § 842.208 of this chapter, but only to the extent that the service was as a law enforcement officer or firefighter as described in § 842.809(b) of this chapter;

(xi) An air traffic controller annuity under FERS as set forth in § 842.207 of this chapter, but only to the extent that the service was as an air traffic controller as described in § 842.809(a) of this chapter;

(3) The computation of benefits under § 846.304(b); and

(4) The computation of average salary under § 846.304(d).

§ 846.303 Crediting military service.

(a) Military service performed before the effective date of the election under § 846.201 creditable as provided under FERS, except as provided in paragraphs (b) and (c) of this section.

(b) Military service described in paragraph (a) of this section which would be creditable under CSRS except for the provisions of § 846.306 and performed by an individual who is subject to an annuity computation under § 846.304(b) is creditable for—

(1) The minimum period for entitlement to an annuity under FERS based on—

(i) The immediate voluntary retirement provisions under § 842.204 of this chapter;

(ii) The early retirement provisions under § 842.205 of this chapter;

(iii) The involuntary retirement provisions under § 842.206 of this chapter;

(iv) The Member retirement provisions under § 842.209 of this chapter;

(v) The military reserve technician retirement provisions under § 842.210 of this chapter;

(vi) The Senior Executive Service, Defense Intelligence Senior Executive Service, or the Senior Cryptological Executive Service retirement provisions under § 842.211 of this chapter; or

(vii) The deferred retirement provisions under § 842.212 of this chapter.

(2) Computation of benefits under § 846.304(b).

(c) If the effective date of the election of FERS by an individual who is subject to annuity computation under § 846.304(b) occurs when the individual is in non-pay status and is performing active military service, benefits for the military service performed before the effective date of the election are computed under CSRS, and benefits for the military service performed after the effective date are computed under FERS. The period of military service is considered to be two separate full periods of service, one ending the day before the effective date of FERS and one beginning on the effective date of FERS. The deposit for the period of service before the effective date of FERS coverage is computed under CSRS provisions set forth in Part 831, Subpart U of this chapter. The deposit for the period of service beginning on the effective date of FERS coverage is computed under FERS provisions set forth in Part 842, Subpart C of this chapter.

§ 846.304 Computing FERS annuities for persons with CSRS service.

(a)(1) The basic annuity of an employee who elected FERS coverage is an amount equal to the sum of the accrued benefits under CSRS as determined under paragraph (b) of this section and the accrued benefits under FERS as determined under paragraph (c) of this section.

(2) The computation method described in paragraph (a)(1) of this section is used in computing basic annuities under Part 842, Subpart D of this chapter, survivor

annuities under Part 843, Subpart C of this chapter, and the basic annuities for disability retirement under Subchapter V of Chapter 84 of Title 5 United States Code.

(3) An annuity computed under this paragraph is deemed to be the individual's annuity under FERS.

(b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section and § 846.305, accrued benefits for civilian service as described in § 846.302(c), and military service as described in § 846.303(b) are computed under CSRS provisions.

(2) Reductions to provide survivor benefits required under Part 831, Subpart F of this chapter, and the 50-percent minimum annuity for air traffic controllers described in 5 U.S.C. 8339(e) do not apply to accrued benefits under this paragraph.

(3) Sick leave creditable under § 831.302 of this chapter is equal to the number of days of unused sick leave to an individual's credit as of the day of retirement, death, or as of the effective date of the election of FERS coverage, whichever is the lesser amount of sick leave, for an individual who—

(i) Retires under §§ 842.204, 842.205, 842.206, 842.207, 842.208, 842.209, 842.210, or 842.211 of this chapter;

(ii) Dies leaving a survivor eligible for a monthly FERS survivor annuity under § 843.310 or § 843.311 of this chapter; or

(iii) After retiring for disability, becomes entitled to an annuity computation under Part 842, Subpart D of this chapter.

(c) Accrued benefits are computed under FERS for the following service:

(1) Creditable civilian service performed on or after the effective date of the election of FERS coverage;

(2) Creditable civilian service other than as described in § 846.302(c); and

(3) Creditable military service other than that described in § 846.303 (b) and (c).

(d)(1) Except as specified in § 846.305, the average pay for computations under paragraphs (b) and (c) of this section is the largest annual rate resulting from averaging the individual's rates of basic pay in effect over any 3 consecutive years of creditable service or, in the case of an annuity based on service of less than 3 years, over the total period of creditable service, with each rate weighted by the period it was in effect.

(2) For the purposes of paragraph (d)(1) of this section, service is considered creditable if it is creditable under either CSRS or FERS.

(e)(1) The cost-of-living adjustments for the annuities of individuals electing FERS coverage are made as follows:

(i) The portion of the annuity computed under paragraph (b) of this section is adjusted as provided under CSRS.

(ii) The portion of the annuity computed under paragraph (c) of this section is adjusted as provided under FERS.

(2) An annuity initially payable to an annuitant's survivor (other than a child under Part 843, Subpart D of this chapter) is increased by the total percent by which the annuitant's annuity was increased under this paragraph. Thereafter, the survivor annuity is adjusted for cost-of-living increases under 5 U.S.C. 8462.

(f) In computing an annuity under paragraph (a) of this section for an employee retiring under § 842.204(a)(1) or § 842.212(b) of this chapter, any reduction for age required by § 842.404 of this chapter applies to the sum computed under paragraph (a) of this section. No reduction under CSRS is applicable.

(g) In computing an annuity under paragraph (a) of this section for an employee retiring early under § 842.205 of this chapter or involuntarily under § 842.206 of this chapter, the reduction for age required by 5 U.S.C. 8339(h) applies to the portion of the annuity computed under CSRS provisions.

(h) In computing an annuity under paragraph (a) for an employee retiring as a firefighter or law enforcement officer under § 842.208 of this chapter or as an air traffic controller under § 842.207 of this chapter, there is no applicable reduction for age.

(i) An annuity supplement under Part 842, Subpart E of this chapter, is computed using the same civilian service used for the computation under paragraph (c) of this section.

(j) An alternative form of annuity for a basic annuity computed under paragraph (a) of this section is computed as follows:

(1) The alternative benefit for the portion of the annuity computed under paragraph (b) of this section is computed under CSRS as provided in Part 831, Subpart V of this chapter, except that a refund of CSRS contributions based on a refund application filed after the individual elects FERS coverage may not be deemed to be redeposited under § 831.2206 of this chapter if the individual is entitled to a deferred annuity under § 842.212 of this chapter.

(2) The alternative benefit for the portion of the annuity computed under paragraph (c) of this section is computed under FERS as provided in Part 842, Subpart G of this chapter.

§ 846.305 Special rules regarding reemployed annuitants.

(a) If a reemployed annuitant elects FERS coverage, the CSRS annuity terminates as of the effective date of the election.

(b) Accrued benefits under § 846.304(a) for a reemployed annuitant electing FERS coverage are computed as follows:

(1) For an individual who is entitled to and elects a redetermined annuity under Part 831, Subpart H of this chapter, the benefits for service performed before the effective date of the FERS election is computed in accordance with § 846.304(b) using an average salary based on service before the effective date of the election. Benefits for the balance of the creditable service are computed under § 846.304(c).

(2) For an individual entitled to a supplemental annuity under Part 831, Subpart H (except an individual described in paragraph (b)(1) of this section), accrued benefits are computed in accordance with § 842.304(b) of this chapter to the date of retirement under CSRS, using the same average salary as was used in computing the CSRS annuity. The benefit is increased by the total percent of cost-of-living increases that were applied to the CSRS annuity to the date it ceased under paragraph (a) of this section. Accrued benefits for service as a reemployed annuitant are computed under Part 831, Subpart H of this chapter, and are included in the CSRS portion of the combined benefit. Accrued benefits for any other creditable service are computed under § 846.304(c).

(3) For an individual not entitled to a supplemental annuity under Part 831, Subpart H of this chapter, accrued benefits are computed as described in paragraph (b)(2) of this section, except that no benefits accrue for the service as a reemployed annuitant.

§ 846.306 General inapplicability of CSRS provisions.

(a) Except as provided by this part, CSRS provisions are not applicable with respect to an individual who elects FERS coverage.

(b) An employee (or an employee's survivor for the purposes of a survivor annuity) may make a deposit under CSRS for any civilian service under § 846.302(c) of this part or military service under § 846.303.

(c) Nothing in paragraph (a) of this section precludes the payment of any lump-sum credit (as defined in 5 U.S.C. 8331(8)) in accordance with Part 831, Subpart T of this chapter.

Subpart D—Refunds of CSRS Contributions

§ 846.401 Refunds of excess contributions.

(a) An individual who elects FERS coverage is entitled to a refund of CSRS contributions made prior to the effective date of the election for service that is subject to FERS computation under § 846.304(c) (if not already refunded) which exceed the contributions required under FERS, as provided by this section.

(b) The refund is equal to—

(1) For service described in § 846.302(a) and performed on or after January 1, 1984, and before January 1, 1987, the amount by which the amount contributed exceeds 1.3 percent of basic pay;

(2) For service described in § 846.302(a) and performed on or after January 1, 1987, the amount by which the amount contributed exceeds the amount required under § 841.503 of this chapter; and

(3) For service described in § 846.302(b), the amount by which the amount contributed exceeds 1.3 percent of basic pay.

(c) A refund made under this section is payable with interest computed as prescribed under § 831.105 (d) and (e) of this chapter. Interest is payable regardless of the length of the period of service for which refund is being made or the total amount of service the employee has.

(d) A refund described in this section is payable upon the receipt of an application by OPM or its designee.

§ 846.402 Refunds of all CSRS contributions.

(a) An individual who elects to transfer to FERS is entitled to a refund of all CSRS contributions in accordance with the provisions of Part 831, Subpart T of this chapter.

(b) An application for refund of FERS retirement contributions under § 843.202 of this chapter is deemed to also be an application for refund of CSRS retirement contributions under Part 831, Subpart T of this chapter.

Subpart E—Cancellation of Designations of Beneficiary

§ 846.501 Cancellation upon transfer to FERS.

A designation of beneficiary made under § 831.2005 of this chapter is cancelled on the effective date of an election of FERS coverage. Designations of beneficiary under FERS must be made in accordance with § 843.205 of this chapter and apply to an employee's contributions under both CSRS and FERS.

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Part III

Office of Personnel Management

5 CFR Part 841

Federal Employees Retirement System—General Administration; General Provisions; Interim Rule With Request for Comments

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 841

Federal Employees Retirement System—General Administration; General Provisions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comments on these rules to implement the Federal Employees Retirement System (FERS) Act of 1986. These rules set up the regulatory framework for implementing FERS and contain rules of general application.

DATES: Interim rules effective June 22, 1987, except for § 841.102(d) which will become effective when Part 844 is added. OPM will publish a document in the **Federal Register** announcing the effective date of § 841.102(d); comments must be received on or before July 20, 1987.

ADDRESS: Send comments to Frank D. Titus; Director, FERS Implementation Task Force; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 884, Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632–5560.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Pub. L. 99–335, created a new retirement system for many Federal employees. Employees who are covered by FERS will be covered by the basic retirement benefit, social security, and the thrift savings plan. OPM is responsible for administration of the basic retirement benefits. Social security benefits are administered by the Social Security Administration. The savings plan is administered by the Federal Retirement Thrift Investment Board.

Subpart A contains the administrative rules governing the operation of FERS that have general application to the basic benefits under FERS, including the regulatory structure that OPM is using to implement FERS, and general and specific definitions of terms.

Subpart B states the general requirement that no benefits are payable under FERS without an application for benefits, and contains rules concerning withdrawal of applications. Generally, applications for one-time or continuing benefits may be withdrawn up to the point that OPM authorizes payment. We want to emphasize that this rule applies to applications for payment of FERS basic benefits. It does not affect an otherwise proper separation from an employing agency, and a separated employee should not expect to regain employment by withdrawing his/her application for benefits.

This general rule has two exceptions. The first is that an application for continuing benefits may not be withdrawn if OPM has received a court order affecting the benefits. The second is back pay situations in which an "appropriate authority" determines that a separation was an "unjustified or unwarranted personnel action" as these terms are used in the back pay provisions (5 CFR Part 550). In this case, a recipient of benefits has 60 days from the date of the decision by an appropriate authority to withdraw his or her application.

Subpart C contains general instructions on filing claims and administrative review rights under FERS.

Under section 553(b)(3)(B) of Title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Delaying implementation of these regulations could delay payment to applicants and generate confusion about when and where to file applications. Such delay would be contrary to the public interest.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees.

List of Subjects in 5 CFR Part 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 841 to add Subparts A, B, and C to read as follows:

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

Subpart A—General Provisions

Sec.

841.101 Purpose.
841.102 Regulatory structure for the Federal Employees Retirement System.
841.103 Definitions.
841.104 Special terms defined.
841.105 Administration of FERS.
841.106 Basic records.
841.107 Computation of interest.
841.108 Disclosure of information.
841.109 Computation of time.
841.110 Payments when insufficient funds are available.

Subpart B—Applications for Benefits

841.201 Purpose.
841.202 Applications required.
841.203 Withdrawal of applications.

Subpart C—Claims Processing

841.301 Purpose.
841.302 Definitions.
841.303 Applications filed with agencies.
841.304 Applications filed with OPM.
841.305 Decisions subject to reconsideration.
841.306 Reconsideration.
841.307 Final decisions without reconsideration.
841.308 Appeals to MSPB.
841.309 Competing claimants.

Subpart A—General Provisions

Authority: 5 U.S.C. 8461; Section 841.108 also issued under 5 U.S.C. 552a.

§ 841.101 Purpose.

The purpose of this subpart is to state the administrative rules governing the operations of the Federal Employees Retirement System (FERS) that have general application to the basic benefits under FERS.

§ 841.102 Regulatory structure for the Federal Employees Retirement System.

(a) This part contains the following subparts:

(1) General provisions (Subpart A);

(2) Applications for benefits (Subpart B);

(3) Claims processing (Subpart C);

(4) Government costs (Subpart D);

(5) Employee deductions and Government contributions (Subpart E);

(6) Computing interest (Subpart F);

(7) [Reserved] (Subpart G);

(8) Waiver, allotment, or assignment of benefits (Subpart H);

(9) Court orders affecting benefits (Subpart I); and

(10) State income tax withholding (Subpart J).

(b) Part 842 of this chapter contains information about basic annuity rights of employees and Members under FERS.

(c) Part 843 of this chapter contains information about death benefits and employee refunds under FERS.

(d) Part 844 of this chapter contains information about disability retirement benefits under FERS.

(e) Part 845 of this chapter contains information about debt collection.

(f) Part 846 of this chapter contains information about election rights available to employees who are eligible to join FERS.

§ 841.103 Definitions.

In this subpart—

"CSRS" means the Civil Service Retirement System as described in Subchapter III of Chapter 83 of Title 5, United States Code.

"FERS" means the Federal Employees Retirement System as described in chapter 84 of title 5, United States Code.

§ 841.104 Special terms defined.

(a) Unless otherwise defined for use in any subpart, as used in connection with FERS (Parts 841 through 846 of this chapter), terms defined in section 8401 of Title 5, United States Code, have the same meanings assigned to them by that section.

(b) Unless otherwise defined for use in any subpart, as used in connection with FERS (Parts 841 through 846 of this chapter)—

"Agency" means an executive agency as defined in section 105 of Title 5, United States Code; a legislative branch agency; a judicial agency; and the U.S. Postal Service and Postal Rate Commission.

"Associate Director" means the Associate Director for Retirement and Insurance in OPM, or his or her designee.

"OPM" means the Office of Personnel Management.

§ 841.105 Administration of FERS.

(a) OPM has charge of the adjudication of all claims for basic benefits arising under FERS and of all matters directly or indirectly concerned with these adjudications.

(b) In the adjudication of claims arising under FERS, OPM will consider and take appropriate action on counterclaims filed by the Government as set-offs against amounts payable from the Civil Service Retirement Fund.

§ 841.106 Basic records.

(a) Agencies having employees or Members subject to FERS must establish and maintain retirement accounts for those employees and Members.

(b)(1) The individual retirement record required by § 841.504(c) is the basic record for action on all claims for annuity or refund, and those pertaining to deceased employees, deceased Members, or deceased annuitants.

(2) When an agency certifies that records maintained by that agency are lost, destroyed, or incomplete, the agency will request the General Accounting Office, through OPM, to furnish the data that OPM considers necessary for a proper determination of the rights of the claimant. When an official record cannot develop the required information, OPM will accept such inferior or secondary evidence that it considers appropriate under the circumstances, and such inferior or secondary evidence is then admissible.

(3) Except as provided in paragraph (b)(2) of this section, inferior or secondary evidence will not be considered.

§ 841.107 Computation of interest.

Interest, when applicable, will be computed under Subpart F of this part.

§ 841.108 Disclosure of information.

(a)(1) Except as provided in section 8461 of Title 5, United States Code, OPM has in its possession or under its control records containing the following types of information:

(i) Documentation of Federal service subject to FERS.

(ii) Documentation of service credit and refund claims made under FERS.

(iii) Retirement and death claims files, including documents supporting the retirement application, health benefits and life insurance eligibility, medical records supporting disability claims, and designations of beneficiaries.

(iv) Claims review and correspondence files pertaining to benefits under the Federal Employees Health Benefits Program.

(v) Documentation of claims made for life insurance and health benefits by annuitants under a Federal Government retirement system other than FERS.

(2) These records may be disclosed to the individual to whom the information pertains, or, with prior written consent of the individual, to any agency or other person, except that medical evidence about which a prudent physician would hesitate to inform the individual, will be disclosed only to a licensed physician designated in writing for that purpose by the individual or by his or her representative.

(3) Federal employee retirement records will be disclosed consistent with the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), including, but not limited to, disclosures pursuant to a routine use promulgated for such records and printed in OPM's periodic publication of notices of systems of records. However, a beneficiary designated in accordance with FERS (5 U.S.C. 8424(c)) will, during the lifetime of the designator, be disclosed to the designator only, at his or her signed written request. Such beneficiary designations that may appear in records being disclosed to other than the designator must be removed before the record is disclosed. If information pertaining to a designation of beneficiary is specifically asked for by a court of competent jurisdiction, it may be released to the court, but with a written notice that it is released under protest.

(4) Except as provided in paragraphs (a)(2) and (a)(3) of this section, OPM will not disclose information from the files, records, reports, or other papers and documents pertaining to a claim filed with OPM, whether potential, pending, or adjudicated. This information is privileged and confidential.

(b) On written request OPM will return, to the person entitled to them, certificates of discharge, adoption papers, marriage certificates, decrees of divorce, letters testamentary or of administration, when they are no longer needed in the settlement of the claim. If papers returned constitute part of the material and essential evidence in a claim, OPM will retain copies of them or of the parts of them that appear to be of evidentiary value.

§ 841.109 Computation of time.

In computing a period of time for filing documents, the day of the action or event after which the designated period of time begins to run is not included. The last day of the period is included unless it is a Saturday, a Sunday, or a legal holiday; in this event, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

§ 841.110 Payments when insufficient funds are available.

Except as provided in Part 581 of this chapter, when a retiree's or survivor's annuity is not sufficient to satisfy all claims against it, the claims will be satisfied in the following order of precedence:

(a) First, Federal Employees Health Benefits Premiums; then,

(b) Federal Employees Group Life Insurance Premiums, which include—

(1) Premiums for insurance under Part 870 of this chapter; then,

(2) Premiums for insurance under Part 871 of this chapter; then,

(3) Premiums for insurance under Part 872 of this chapter; then,

(4) Premiums for insurance under Part 873 of this chapter; then,

(c) Premiums for Medicare; then,
(d) Amounts due to the Civil Service Retirement Fund; then,
(e) (1) Amounts due to the United States that have been reduced to judgment and Federal tax liens in the order that OPM receives certification of the debt under Part 845 of this chapter; then,
(2) Other amounts due to the United States in the order that OPM receives certification of the debt under Part 845 of this chapter; then,
(f) Amounts due to a former spouse based on a qualifying court order under Subpart I of this part; then,
(g) Amounts withheld for Federal income taxes; then
(h) Amounts withheld for State income taxes; then
(i) Amounts withheld to satisfy court orders under Part 581 of this chapter; then
(j) Payment to the retiree or survivor.

Subpart B—Applications for Benefits

Authority: 5 U.S.C. 8461.

§ 841.201 Purpose.

This subpart states the general application requirement applicable under the Federal Employees Retirement System (FERS). Specific application requirements for particular benefits are contained with the regulations concerning those benefits.

§ 841.202 Applications required.

(a) No benefit is payable under FERS, until after the claimant has applied for the benefit in the form prescribed by OPM.
(b) An employee, Member, or survivor may exercise any option or make any election authorized by FERS only in the form prescribed by OPM.

§ 841.203 Withdrawal of applications.

(a) Except as provided in paragraphs (b) and (c) of this section, an applicant for benefits under FERS may withdraw his or her application for benefits until a payment based on that application has been authorized, but not thereafter.
(b) An applicant for benefits under FERS may not withdraw his or her application for benefits after OPM has received a certified copy of a court order (under Part 581 of this chapter or Subpart I of this part) affecting the benefits.
(c) When an "appropriate authority" determines that the separation upon which payment has been based is an "unjustified or unwarranted personnel action" as these terms are defined in § 550.804 of this chapter, an individual may withdraw his/her application for FERS benefits within 60 days of the decision. As provided in § 550.805, any FERS payments must be deducted from any back pay award.

Subpart C—Claims Processing

Authority: 5 U.S.C. 8461.

§ 841.301 Purpose.

(a) This subpart explains—
(1) The procedures that employees, separated employees, retirees, and survivors must follow in applying for benefits under FERS;
(2) The procedures that OPM will generally follow in determining eligibility for benefits under FERS;
(3) The appeal rights available to claimants adversely affected by OPM decisions under FERS; and
(4) The special rules for processing competing claimant cases under FERS.
(b) This subpart does not apply to processing—
(1) Forfeiture of annuity for conviction of certain criminal offenses relating to national security under Subchapter II of Chapter 83 of Title 5, United States Code (processed under Subpart K of Part 831 of this chapter);
(2) Court orders affecting FERS benefits (processed under Subpart I of this part); or
(3) Collection of debts due to the United States (processed under Part 845 of this chapter).

§ 841.302 Definitions.

In this subpart—
"Employee" means an employee as defined in section 8401(11) of Title 5, United States Code, and a Member as defined in section 8401(20) of title 5, United States Code. "Employee" includes a person who had applied for retirement under FERS but had not been separated from the service prior to his or her death even if the person's retirement would have been retroactively effective upon separation.
"FERS" means the Federal Employees Retirement System as described in Chapter 84 of Title 5, United States Code.
"MSPB" means the Merit Systems Protection Board described in Chapter 12 of Title 5, United States Code.
"Retiree" means a former employee or Member who is receiving recurring payments under FERS based on service by the employee or Member. "Retiree," as used in this subpart, does not include a current spouse, former spouse, child, or person with an insurable interest receiving a survivor annuity. "Retiree" for purposes of determining a person's status at the time of death means that the person had been separated from the service and had met all the requirements to receive an annuity including having filed an application for the annuity prior to his or her death.
"Separated employee" means a former employee or Member who has been separated from the service but who has not met all the requirements for retirement under FERS or who has not filed an application for retirement under FERS.
"Survivor" means a person entitled to benefits under Part 843 or 846 of this chapter based on the death of an employee, separated employee, retiree, or survivor.

§ 841.303 Applications filed with agencies.

(a) Employees filing applications for retirement or to make deposits or redeposits under FERS (including applications for disability retirement) and separating employees filing applications for refunds of contributions must file their applications with their employing agencies.
(b) Survivors filing applications for death benefits based on the death of an employee may file their applications with the employee's employing agency.

§ 841.304 Applications filed with OPM.

(a) Separated employees filing applications for retirement or refunds of contributions; survivors filing applications for death benefits based on the deaths of separated employees, retirees, or survivors; and retirees making elections or seeking to change information in their retirement records must file their applications with OPM.
(b) Survivors filing applications for death benefits based on the death of an employee may file their applications with OPM.

§ 841.305 Decisions subject to reconsideration.

(a) A OPM decision under FERS is subject to reconsideration by OPM, whenever the decision is in writing and states the right to reconsideration.
(b) OPM will reconsider a decision subject to reconsideration under § 841.306. A decision subject to reconsideration is not subject to appeal under § 841.308.

§ 841.306 Reconsideration.

(a) *Who may file.* Except as noted in paragraph (b) of this section, any individual whose rights or interests under FERS are affected by an OPM decision (under § 841.305) stating the right to request reconsideration may request OPM to review its initial decision.
(b) *Actions covered elsewhere.* (1) A request for reconsideration of termination of annuity payments under 5 U.S.C. 8311 through 22 will be made in

accordance with the procedures set out in Subpart K of Part 831 of this chapter.

(2) A request for reconsideration of a decision to collect a debt will be made in accordance with § 845.204(b).

(3) A decision on court orders affecting FERS benefits will be made in accordance with Subpart I of this part.

(c) *Reconsideration.* A request for reconsideration, when applicable, must be in writing, must include the applicant's name, address, date of birth and claim number, if applicable, and must state the basis for the request.

(d) *Time limits on reconsideration.* (1) A request for reconsideration must be received by OPM within 30 calendar days from the date of the initial decision.

(2) The Associate Director's representative responsible for reconsiderations may extend the time limit for filing when the requestor shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

(e) *Final decision.* After any applicable reconsideration, the Associate Director's representative will issue a final decision that must be in writing, must fully set forth the findings and conclusions of the reconsideration, and must contain notice of the right to request an appeal provided in § 841.308. Copies of the final decision must be sent to the individual, to any competing claimants and, where applicable, to the agency.

§ 841.307 Final decisions without reconsideration.

OPM may issue a final decision providing the opportunity to appeal under § 841.308 rather than an opportunity to request reconsideration under § 841.306. Such a decision must be in writing and state the right to appeal under § 841.308.

§ 841.308 Appeals to MSPB.

Except as noted in this paragraph, an individual whose rights or interests under FERS are affected by a final decision of OPM may request MSPB to review the decision in accord with procedures prescibed by MSPB. Decisions made in accord with the procedures referenced in § 841.306(b)(1) are made under Subchapter II of Chapter 83, Title 5, United States Code. Such decisions are not appealable to MSPB under section 8461(e) of Title 5, United States Code.

§ 841.309 Competing claimants.

(a) Competing claimants are applicants for survivor benefits based on the service of an employee, separated employee, or retiree when—

(1) A benefit is payable based on the service of the employee, separated employee, or retiree; and

(2) Two or more claimants have applied for benefits based on the service of the employee, separated employee, or retiree; and

(3) An OPM decision in favor of one claimant will adversely affect another claimant(s).

(b) In cases involving competing claimants, the Associate Director or his or her designee will issue a final decision that will be in writing, will fully set forth findings and conclusions, and will contain notice of the right to appeal provided in § 841.308. Copies of the final decision will be sent to all competing claimants.

(c)(1) When OPM receives applications from competing claimants before any payments are made based on the service of the employee or Member, OPM will begin payments to the claimant(s) found entitled in the decision issued under paragraph (b) of this section.

(2) When OPM does not receive an application from a competing claimant(s) until after another person has begun to receive payments based on the service of the employee or Member, the payments will continue until a decision is issued under paragraph (b) of this section. When a decision is issued under paragraph (b) of this section, OPM will—

(i) If OPM affirms its earlier decision, continue payments to the claimant(s) OPM originally determined to be entitled; or

(ii) If OPM reverses its earlier decision, suspend payment to the claimant(s) OPM originally determined to be entitled and immediately begin payment to the claimant(s) OPM determines to be entitled in its decision under paragraph (b) of this section. OPM will not take action to collect the overpayment until the time limit for filing an appeal has expired or the MSPB has issued a final decision on a timely appeal, whichever comes later.

[FR Doc. 87-11433 Filed 5-20-87; 8:45 am]
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federal register

Thursday
May 21, 1987

Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Minorities in the Juvenile Justice System; Issuance of Solicitation for Applications to Conduct Research; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Minorities in the Juvenile Justice System; Issuance of Solicitation for Applications to Conduct Research

AGENCY: Office of Juvenile Justice and Delinquency Prevention, DOJ.

ACTION: Notice of issuance of a solicitation for applications to conduct research on minorities in the juvenile justice system.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to Part C, section 243 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, announces a new OJJDP program entitled "Minorities in the Juvenile Justice System." This study is being undertaken for the purpose of developing a series of well justified policies and program recommendations addressing the issue of disproportionate involvement of minorities in the juvenile justice system. The results of this study are intended to improve our understanding of both the extent and nature of the problem; inform the development of a well defined research agenda; and contribute to the development of policy and program recommendations.

OJJDP's National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) invites public or private agencies to submit applications to assess research and other relevant literature and programs focused on the processing of minority juvenile offenders in the juvenile justice system; identify gaps in existing information; and develop recommendations for policies, programs and/or research which would address the differential penetration and/or treatment of minorities in the juvenile justice system. For the purposes of this program announcement, minority populations are defined as members of the following groups: (1) Asian Pacific Islanders; (2) Blacks; (3) Hispanics; and (4) American Indians. The project period will be twelve months during which the study will be conducted and a final report completed. OJJDP has allocated $100,000 for this program. One grant will be awarded.

DATE: The deadline for receipt of applications is June 30, 1987.

FOR FURTHER INFORMATION CONTACT: Deborah Wysinger, Research and Program Development Division, National Institute for Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Room 784, Washington, DC 20531, Telephone (202) 724-5929.

SUPPLEMENTARY INFORMATION:

Program Announcement—Minorities in the Juvenile Justice System

Table of Contents

I. Introduction and Background
II. Program Goals and Objectives
III. Program Strategy
IV. Dollar Amount and duration
V. Eligibility Requirements
VI. Major Responsibilities of the Successful Applicant
VII. Application Requirements
VIII. Selection Procedures and Criteria
IX. Deadline for Submission of Applications
X. Civil Rights Compliance

I. Introduction and Background

Like other social institutions, the justice system is not blind to ethnic and racial differences. In considering the disproportionately high involvement of minorities in the juvenile justice system, we may turn to the disparate status of minorities in the larger society. Inequality and disparity are part of the fabric of our society, and juvenile justice agencies are no less a part of that society than any other institution.

In 1985, Black youth (aged 13 to 17 years old) comprised approximately 15 percent of the country's youth population, while accounting for more than 25 percent of all youth arrested for property crimes and representing more than half of all juvenile offenders arrested for violent crimes. Black youth are over-represented in detention, correctional, and shelter facilities as well. According to the 1985 Children in Custody census of public juvenile facilities, 37 percent of all youth in these facilities were Black. A report prepared by the Hubert Humphrey Institute of Public affairs and the National Council on Crime and Delinquency indicates that in 1979, the incarceration rates for Black, Hispanic, and American Indian males in public correctional institutions was approximately two to four times higher than the incarceration rate for Whites. An obvious question then is whether this disparity reflects differences in individual behavior or in the juvenile justice system responses to behavior. If minorities have a greater involvement in delinquent and criminal behavior, it would be anticipated to result in more frequent arrests, more frequent juvenile court appearances, and higher incarceration rates. The hypothesis that the high minority youth incarceration rates is a function of their greater involvement in delinquent and criminal behavior is not conclusively supported by available data. Rather, the data on arrests and self-reported crime raise further questions about the policies and practices at each stage of the juvenile justice process that may contribute to the higher rates of minority youth incarceration.

Although the empirical evidence is not definitive, it suggests that the accumulation of a juvenile record (central to the issue of differential treatment) appears to be a process which is differentiated by race, possibly accounting, in part, for the disproportionate minority representation in the juvenile justice system. Studies suggest that bias may exist in the charging decisions at the time of arrest and in the detention decision, both of which have implications for subsequent decisions by the system. For example, a study completed by the URSA Institute in 1986, examined racial disparities at six points in juvenile justice processing, from apprehension through judicial commitment decisions. Race was found to be a direct, indirect, and interactive influence at various decision points. The results suggest that the juvenile justice system reflects social and economic disparities endemic in other societal institutions.

Numerous other studies have examined this issue. To date, these studies have yielded ambiguous results, with findings complicated by methodological shortcomings, divergent research strategies and design artifacts. Further, there are few recommendations on policies or programs that would address this issue.

Before conducting further studies that may help to clarify the ambiguities presently complicating efforts to form a consensus on the issues or the solutions, a thorough review of existing information is essential. Completion of the review will facilitate the development of policy and program recommendations.

II. Program Goals and Objectives

This program will assess the definitiveness of existing information on the extent and reasons for the disproportionate involvement of minorities in the juvenile justice system. The goal of this study is to develop well justified policy and program recommendations aimed at reducing disproportionate minority involvement in the juvenile justice system, and research recommendations to improve understanding of the reasons and implications of disproportionate minority involvement in the juvenile justice system.

The major objectives of this assessment are to: (1) Evaluate the

findings from existing research and other relevant literature focused on the processing of minority juvenile offenders in the juvenile justice system from delinquent behavior, through the point of arrest, to disposition, to identify the soundest knowledge base possible, and critical gaps in existing information; (2) conduct necessary additional secondary analyses of relevant data sets; (3) identify existing programs/policies that jurisdictions may have designed to address this problem; and (4) develop recommendations for policies, programs and research that would address the differential penetration of minorities in the juvenile justice system.

III. Program Strategy

The program strategy consists of three components: literature review, secondary analysis, program assessment and recommendations. The product of the three components will form the basis of an agenda for the symposium.

A. Literature Review

This component will consist of a comprehensive review of relevant literature to identify issues related to the disproportionate involvement of minority juveniles in all phases of the juveniles justice system. A thorough assessment of studies focused on the processing of minorities in the systems, and on the involvement of minorities in delinquent behaviors should be conducted to determine the validity and reliability of the results.

Comparisons among findings from different studies will be difficult because of their diversity: some are primarily statistical; others are narrative or qualitative; some have large sample sizes and others are small; some have controlled research designs, others do not. The applicant should describe how they will evaluate the merits of various findings drawn from diverse studies.

B. Secondary Analysis

The literature review can be supplemented by secondary analyses of existing data. If secondary analyses are proposed, the applicant must provide justification for how particular data set(s) will address the research goals and objectives of this program; assure researchers access to the data base(s); determine the appropriateness of the sampling design, data collection instruments and protocols of the original data base for answering the specific research questions. Specific hypotheses should be stated and data analyses strategies and specific procedures should be detailed.

C. Program Assessment

The literature review should be supplemented by efforts to identify jurisdictions that have examined the issues of disproportionate representation in their juvenile justice system. The strategies used to examine the issues, the conclusions, proposed policy or program recommendations, and policy or program modifications which were implemented should be described. The applicant should explain how they would seek to identify jurisdictions and how activities aimed at addressing the issue of disproportionate minority involvement would be documented.

D. Consensus/Recommendations

Based on the successful completion of the review and the completion of a report which meets accepted standards of research and is acceptable to the OJJDP, the grantee will convene a symposium of criminologists, representatives of law enforcement, courts, corrections and policy makers to review the findings and comment on the feasibility of implementing the recommended policies and programs, and on the usefulness and feasibility of recommended research. The symposium should be structured and designed to address issues regarding possible strategies that police, courts, corrections, and policy makers could implement to minimize disproportionate representation and differential treatment of minorities in the juvenile justice system.

IV. Dollar Amount and Duration

Up to $100,000 has been allocated for award in Fiscal Year 1987. One grant will be awarded competitively. The project period for this program will be twelve (12) months.

V. Eligibility Requirements

Eligible applicants include public and private agencies or organizations. In order to maximize competition in the award of this research program, "for-profit" organizations are eligible to apply provided they certify compliance with the following two agency policy requirements:

1. The OJJDP grant award must not be used to support the normal profit-making operations of the organization, but must serve to support or stimulate the legislatively authorized research and evaluation objectives of NIJJDP; and

2. For at least one year following the termination of this award, the recipient will not compete for or accept any procurement or assistance award supported by OJJDP funds which may have resulted or been derived from the original award under this program.

Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. The applicant and any co-applicants must have the management and financial capability to effectively implement this research project. Applicants who fail to demonstrate that they have the capability to manage this project will be ineligible for funding consideration.

The applicant must have experience in the following areas to be eligible for consideration:

A. Prior experience in the area of research design and methodology and,

B. Demonstrated knowledge of the issues associated with disproportionate minority involvement in the juvenile justice system.

VI. Major Responsibilities of the Successful Applicant

The organization selected to conduct this research project will be responsible for all aspects of the project, including the development of all products on time, according to the approved workplan.

The successful applicant will have specific responsibility for developing a research methodology that is responsive to the goals and objectives of the study as outlined in this solicitation. A project advisory board will be appointed with the concurrence of OJJDP. It will meet at least twice during the course of the project to critically review the research design and methodology, interim findings and recommendations and provide overall guidance on the development of the symposium.

In addition to submitting all financial and progress reports required by this agency, the grantee will be responsible for completing the following tasks:

1. Development of a comprehensive research design;

2. Completion of the literature search within four months of the award;

3. Completion of final report by the sixth month of the project which includes a summary of relevant literature, identification of significant issues to be resolved and a set of well justified policy program, and/or research recommendations to be considered by OJJDP and other Federal, State and local agencies is developing future programs focused on this issue;

4. Conduct a three day symposium by the ninth month of the award;

5. Preparation of a summary of the symposium proceeding by the twelfth month of the project.

VII. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget and a budget narrative. In submitting joint applications, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. This organizations that are primarily procuring services for products from other organizations would not be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following must be included in the application:

A. A clear statement of the problem to be addressed, including evidence of knowledge of related literature and identification of significant issues to be resolved.

B. A complete discussion that demonstrates the applicant(s) understanding the goals and objectives of the study and the nature of the phenomenon under investigation.

C. A complete discussion of the proposed research design and methodology. This section should clearly demonstrate the applicant's understanding of the study including presentation of your specific study's goals, objectives, and research questions to be addressed; specification of data sources and verification of data access; plans for data collection and the provision of a detailed analysis plan.

D. A discussion of the implementation plan that includes:

1. Identification of major milestones and designation of organizational responsibility;

2. Identification of prospective advisory board members and their roles and qualifications;

3. Presentation of plans for implementing the literature review, secondary analysis, program assessment and symposium. (See Section III A–D.);

4. Discussion of the products that will be developed and the potential contribution to the body of knowledge about the extent and the nature of the problem;

5. Description of the final report in terms of the audience targeted and the types of journals and other potential vehicles for dissemination for which it will be developed.

E. A description of the project management structure that includes a proposed staffing plan, position descriptions that delineate roles and responsibilities, description of relevant staff experience and expertise, and resumes of key project staff (include as an appendix to the application).

F. An organizational capability statement that describes relevant organizational experience and demonstrates that the applicant has the substantive and financial capability to effectively administer the project.

G. A detailed budget of the program activities for the entire twelve months.

VIII. Selection Procedures and Criteria

All applications received in response to this solicitation will be evaluated by an external peer review panel. The applications will be reviewed in terms of their responsiveness to the specifications in the solicitation. Specially, they will be rated according to the following criteria and weights:

A. Problem Statement (10 Points)

The problem to be addressed is clearly stated, including knowledge of related literature. (Refer to Section VII A.)

B. Goals and Objectives (15 Points)

An understanding of the goals and objectives of this program is clearly articulated, including how applicant's specific study goals and objectives will meet the goals of this study. (Refer to Section VII B.)

C. Research Design (30 Points)

The research design is sound and contains program elements directly linked to the achievement of project objectives, including a discussion of accessibility of data. (Refer to Section VII C.)

D. Implementation Plan (30 Points)

The implementation plan is adequate, clear and appropriate to support the development of useful products. (Refer to Section VII D.)

E. Organizational Capability (10 Points)

Organizational and staff capability is demonstrated at a level sufficient to successfully support the project. (Refer to Section VII E and F.)

F. Budget (5 Points)

Budget costs are reasonable, complete and appropriate in comparison to the activities proposed to be undertaken. (Refer to Section VII G.)

Applications receiving the highest total score on the above criteria will be recommended for funding to the Administrator, OJJDP. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist the Administrator's consideration of competing applications and selection of applications for funding. The final award decisions will be made by the OJJDP Administrator.

IX. Deadline for Submission of Applications

Deadline for submission is June 30, 1987. One signed original and five copies of the application must be mailed or delivered to the Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Room 784, 633 Indiana Avenue NW., Washington, DC 20531, by 5:30 p.m. on that day. Those applications mailed to the above address must be postmarked on or *before* June 30, 1987. The necessary forms for applications may be obtained by writing to OJJDP. Questions regarding the solicitation may be directed to Deborah Wysinger, (202) 724–7560, or at the above address. Those intending to submit an application are requested to mail a letter of intent to the above address by June 15, 1987.

X. Civil Rights Compliance

A. All recipients of OJJDP assistance, including contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G.

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the

Office of Civil Rights Compliance (CRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request, timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 87-11652 Filed 5-20-87; 8:45 am]

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federal register

Thursday
May 21, 1987

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Portland International Airport, Oregon; Removal of Special Airport Traffic Area Provisions; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 24967; Amdt. No. 93-55]

Portland International Airport, Portland, OR; Removal of Special Airport Traffic Area Provisions

AGENCY: Federal Aviation Administration (FAA).

ACTION: Final rule.

SUMMARY: This action deletes the special Airport Traffic Area (ATA) at Portland International Airport, Portland, OR. An Airport Radar Service Area (ARSA) was established at Portland International Airport effective January 16, 1986, and makes it unnecessary to have special airport traffic rules at the airport.

EFFECTIVE DATE: 0901 u.t.c. June 15, 1987.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch, ATO-230, Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1986, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (FAR) (14 CFR Part 93) to delete the rules and procedures of Subpart H of FAR Part 93, Portland International ATA (51 FR 15013). The Portland International Airport, Portland, OR, special ATA was established under 14 CFR Part 93 (32 FR 12747, September 6, 1967) and amended in 1976 (41 FR 5386, February 6, 1976) and 1980 (45 FR 73653, November 6, 1980). Together FAR sections 93.101 to 93.105, organized as Subpart H of Part 93, established certain traffic patterns to be flown for arrivals and departures operating at Pearson Airpark, Portland, OR, and established certain communications requirements for those operations.

On December 9, 1985, (50 FR 50254) the FAA designated an ARSA at Portland International Airport, Portland, OR, which became effective January 16, 1986. The configuration of the Portland ARSA in the vicinity of Pearson Airpark coupled with the requirement for pilots to establish two-way radio communications with Portland Approach Control prior to entering designated ARSA airspace removes the need for the special ATA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on this proposal to the FAA. The Air Line Pilots Association responded in support of the proposal. No other comments were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

The Rule

This rule deletes the rules and procedures of the special ATA at Portland International Airport, OR, as contained in FAR Part 93, Subpart H. The provisions of the ARSA Program utilized at Portland International Airport provide an adequate level of safety with respect to arrival and departure air traffic at Pearson Airpark. Subpart H of Part 93 is hereby reserved for future use. The removal of these special airport traffic rules should have no effect on operators to or from Pearson Airpark. Aircraft complying with the Part 93 special air traffic rules provisions were required to follow specific routes and altitudes to and from Pearson Airpark. Since this airspace around Pearson is partially excluded from the surface area of the ARSA, the basic procedures for operating to and from this airport under ARSA rules will be approximately the same as under the previous Part 93 rule.

The FAA has determined that this action: (1) Is not a major rule under Executive Order 12291; (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a full regulatory evaluation as the anticipated impact is so minimal. For the reasons set forth above, it is certified that this rule will not have significant 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.

Adoption of the Amendment

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

PART 93—[AMENDED]

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

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

Subpart H—[Removed and reserved]

§§ 93.101 through 93.105

2. Part 93, Subpart H (§§ 93.101 through 93.105) is removed and reserved.

Issued in Washington, DC, on May 7, 1987.

Donald D. Engen,

Administrator.

[FR Doc. 87-11623 Filed 5-20-87; 8:45 am]

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federal register

Thursday
May 21, 1987

Part VI

The President

Proclamation 5659—Death of American Servicemen on Board United States Ship STARK

Page

Federal Register
Vol. 52, No. 98
Thursday, May 21, 1987

Presidential Documents

Title 3—

The President

Proclamation 5659 of May 19, 1987

Death of American Servicemen on Board United States Ship STARK

By the President of the United States of America

A Proclamation

As a mark of respect for the American servicemen who died as the result of the attack on United States Ship STARK, which was struck by a missile on May 17, 1987, while on patrol in the Persian Gulf to keep vital sea-lanes open, I hereby order, by the authority vested in me as President of the United States of America by section 175 of title 36 of the United States Code, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal government in the District of Columbia and throughout the United States and its Territories and Possessions through Monday, Memorial Day, May 25, 1987. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

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Federal Register

Vol. 52, No. 98

Thursday, May 21, 1987

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Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-5240
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MAY

15935-16228.....1
16229-16366.....4
16367-16804.....5
16805-17282.....6
17283-17386.....7
17387-17536.....8
17537-17746.....11
17747-17914.....12
17915-18186.....13
18187-18334.....14
18335-18542.....15
18543-18686.....18
18687-18900.....19
18901-19124.....20
19125-19258.....21

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5643.....15935
5644.....16229
5645.....16367
5646.....16805, 17678
5647.....16815
5648.....16817
5649.....16819
5650.....17382
5651.....17915
5652.....17917
5653.....18187
5654.....18189
5655.....18898
5656.....18900
5657.....19122
5658.....19123
5659.....19257

Executive Orders:
6269 (Amended by PLO 6642).....16248
12547 (Revoked by EO 12597).....18335
12595.....17383
12596.....17537
12597.....18335

Administrative Orders:
Memorandums:
May 14, 1987.....18685

5 CFR

110.....16174
831.....17387, 19125
841.....19242
842.....18191
846.....19232
870.....17387
890.....17387
950.....16174
1201.....17919
1605.....17919, 19018
1631.....17922

Proposed Rules:
550.....17762
831.....19150
890.....17300, 19151

7 CFR

2.....17539, 18687
250.....17928
251.....17928
252.....16369
278.....18196
354.....16821
400.....17546, 19126
420.....17546
424.....17546
425.....17546
428.....17546
430.....17546
431.....17546
432.....17546
433.....17546
444.....17546
445.....17546
447.....17546
449.....17546
702.....16738
760.....17934
907.....16369
910.....15937, 17388, 18339, 18901
916.....17504
979.....17388
982.....17390
989.....16231
1040.....18339
1046.....17747
1477.....18198
1493.....17549
1951.....18543

Proposed Rules:
28.....16394, 19018
51.....16399
59.....17763
273.....17580
713.....18565
725.....18918
726.....18918
907.....17764
908.....17764
918.....16401
929.....18369
933.....17581
1007.....15951, 17678
1011.....15951, 17678
1030.....18894
1033.....17586
1036.....17586
1040.....17586
1046.....15951, 17678
1093.....15951, 17678
1094.....15951, 17678
1096.....15951, 17678
1098.....15951, 17678
1106.....16402

8 CFR

100.....16190
103.....16190
109.....16216
204.....16233
210.....16195
211.....16190
212.....16190, 16370
234.....16190
241.....16370
242.....16190, 16370
245A.....16205
264.....16190
274A.....16216

287.....16370
299.....16190
Proposed Rules:
204.....18236

9 CFR

78.....18687
92.....18199
97.....16233, 16822
318.....17283
Proposed Rules:
91.....17597
381.....15960

10 CFR

50.....16823
420.....18548
465.....18548
600.....18548
962.....15937
Proposed Rules:
50.....16275
60.....16403
435.....17052
1010.....17765, 18647

11 CFR

Proposed Rules:
114.....16275

12 CFR

207.....15941
220.....15941
221.....15941
224.....15941
510a.....17392
545.....18340
561.....18340
563.....18340
563c.....18340
570.....18340
605.....18200
611.....19129
614.....19129
Proposed Rules:
225.....18703
561.....18369
563.....17406, 18043, 18369, 18386
565.....17408
571.....18369, 18386
790.....19152

13 CFR

101.....18352
Proposed Rules:
102.....18570
120.....19155
142.....19156

14 CFR

15.....18170
39.....16829, 16830, 17550, 17748, 17749, 17935, 17936, 18548–18550, 18902, 19130
43.....17276
61.....17276
65.....17518
71.....17366, 17551, 17552, 17937, 18551, 18903, 19132
73.....16832, 17393, 18552
75.....18903
91.....17276, 18688
93.....19254
97.....17394
135.....18688
300.....18903
385.....18904
1206.....18905
Proposed Rules:
21.....17409, 17410, 18573
23.....18573
25.....17890
39.....16851, 16852, 17598–17601, 17958, 17959, 18575, 19168
71.....16853–16858, 18536, 18576, 18920

15 CFR

369.....17284

16 CFR

13.....16234
436.....18353
455.....18552
Proposed Rules:
13.....17602, 17960
1015.....17767

17 CFR

1.....18908
15.....18908
16.....18908
200.....18689
211.....17396, 18200
240.....16833
249.....16833
Proposed Rules:
240.....18237
249.....17301

18 CFR

11.....18201
16.....18227
375.....18561
385.....16844
389.....18227
410.....16238, 17888
1301.....17938
Proposed Rules:
157.....18703
271.....18577, 18578
284.....18703

19 CFR

101.....16373, 18322
Proposed Rules:
101.....17770

20 CFR

359.....19133
404.....17285, 19135
416.....16844, 17285
Proposed Rules:
404.....19169
410.....19169
416.....19169
654.....16770
655.....16770

21 CFR

74.....15944
81.....15945
172.....18911
176.....17553
193.....17940, 17941
510.....18495, 18690
520.....18495
522.....18495, 18690
524.....18495, 18690
529.....18495
558.....16239
561.....17940, 17941
862.....16102
864.....17732
866.....17732
868.....17732
870.....17732, 18162
874.....18495
876.....17732
880.....17732
882.....17732
884.....17732
890.....17732
1301.....17286
1311.....17286
1312.....17286
Proposed Rules:
102.....18921
103.....18922
146.....19169
161.....18921
165.....18922
181.....18923
182.....18772
184.....18772
186.....18772
862.....16139

22 CFR

41.....17942
42.....17942
43.....17943

24 CFR

201.....17397
203.....17397
232.....17751, 18228
234.....17397
235.....17751, 18228
243.....17949
255.....16240
511.....17949
842.....17949
942.....17949
Proposed Rules:
247.....16403
886.....16403
3280.....17896
3282.....17412

25 CFR

Proposed Rules:
22.....17988

26 CFR

1.....18562
301.....17949, 19136
Proposed Rules:
1.....18578, 18579
301.....17989
602.....18579

28 CFR

0.....17951
2.....17398
17.....17752
60.....19137

29 CFR

1601.....18353
1910.....16241, 17752
1926.....17752
1928.....16050
2619.....18354
2676.....18355
Proposed Rules:
500.....16859
501.....16795
1919.....17302
2603.....16862

30 CFR

5.....17506, 18772
15.....17506,18772
18.....17506, 18772
19.....17506, 18772
20.....17506, 18772
21.....17506, 18772
22.....17506, 18772
23.....17506, 18772
24.....17506, 18772
25.....17506, 18772
26.....17506, 18772
27.....17506, 18772
28.....17506, 18772
29.....17506, 18772
31.....17506, 18772
32.....17506, 18772
33.....17506, 18772
35.....17506, 18772
36.....17506, 18772
74.....17506, 18772
700.....17724
701.....17526, 17724
762.....18792
773.....17526
785.....17724
827.....17724
906.....17291
950.....16845
Proposed Rules:
271.....17770
280.....15963
773.....16275, 17366
870.....18680
902.....17772
926.....19171
934.....16863
946.....17604

32 CFR

43.....17951
230.....17293
231a.....17294
286.....15946
701.....17294
818a.....17756
Proposed Rules:
155.....16854
226.....17605
1900.....18579

33 CFR

1.....17554
3.....16480
100.....17400, 18562, 19138
117.....18229
165.....17295–17297, 18230
166.....18231
207.....18234
Proposed Rules:
110.....17304
117.....17413, 18582, 19172, 19173
162.....19173
165.....17304
334.....17990

34 CFR

221.....16748
673.....17900
Proposed Rules:
215.....17366
221.....16764
222.....16144
237.....18184
250.....17532
251.....17532
309.....18174
315.....17744
350.....17368
351.....17368
352.....17368
353.....17368
354.....17368
355.....17368
356.....17368
357.....17368
358.....17368
359.....17368
614.....17906
762.....16362

36 CFR

1154.....16374
Proposed Rules:
223.....18399, 18926

38 CFR

21.....17951
36.....18355
Proposed Rules:
3.....17773, 18772
4.....17607
21.....17990, 18399, 18400
39.....18401, 19139
42.....16409

39 CFR

10.....17401
224.....18911
225.....18911
916.....18911
963.....18911
3001.....19139

40 CFR

52.....16243, 16246, 16384
60.....17555
61.....18357, 18358
65.....16247, 17759
81.....17952, 17953, 18691
147.....17680
180.....16847, 17954
261.....17401
271.....17403, 19139, 19140
712.....19027
716.....16022, 19027
795.....19082
796.....19056
797.....19056
798.....19056
799.....19082, 19088
Proposed Rules:
52.....16877, 18240-18244, 18402, 19175
60.....16334
147.....17684, 17696
180.....16878, 16880
260.....16982
261.....16982, 18583
262.....16158, 17888
264.....16982
265.....16982
266.....16982, 18043
270.....16982
271.....16982
300.....17991
440.....17993
712.....18245-18250
716.....18245
795.....19096
799.....19096

41 CFR

Proposed Rules:
106-6.....18774

42 CFR

57.....18672, 19142, 19144
64a.....18358
Proposed Rules:
405.....17777
412.....18840

43 CFR

Public Land Orders:
6642.....16248
6643.....16248
Proposed Rules:
2.....17780
3420.....18404
3460.....18404
4100.....19032

44 CFR

64.....17955
Proposed Rules:
62.....18929
80.....17415
81.....17415
82.....17415
83.....17415

45 CFR

Ch. V.....17556
1611.....18913
Proposed Rules:
612.....16279
1100.....18585
1602.....19176

46 CFR

32.....18360
69.....15947
77.....18360
92.....18360
96.....18360
190.....18360
195.....18360
516.....18692
519.....18692
572.....18692
Proposed Rules:
Ch. IV.....17787
502.....16418
503.....16418
558.....16282
559.....16282
560.....16282
561.....16282
562.....16282
564.....16282
566.....16282
569.....16282
572.....18722
586.....18408

47 CFR

Ch. I.....16386
1.....16249
22.....16847
36.....17228
61.....16388
64.....17760
65.....17228
67.....17228
69.....17228
73.....16480, 16849, 18697-18699, 18914, 18915
76.....17574
95.....16262
97.....18647, 18916
Proposed Rules:
15.....17612
31.....18932
32.....18932
67.....18408
69.....17252
73.....16883, 16884, 17791, 17993, 18253, 18723, 18933-18935
80.....18409
90.....18935

48 CFR

Ch. 16.....16032
1.....18158
27.....18158
52.....18158
204.....16263
205.....16263
206.....16263
219.....16263
252.....16263
519.....16390
552.....16390
553.....16390
1033.....17298
Proposed Rules:
5.....17280
6.....17280
31.....18158
35.....17280
204.....16289
205.....16289
206.....16289
219.....16289
252.....16289
819.....16290

49 CFR

1.....18917
173.....15948
1014.....18564
1039.....17404
1160.....18365
1312.....15948
Proposed Rules:
171.....16482, 19116
172.....16482
173.....16482, 19116
174.....16482
175.....16482
176.....16482
177.....16482
178.....16482
179.....16482
387.....19116
571.....17306, 17791, 19179
1160.....17420
1165.....17420
1201.....17792
1330.....17613

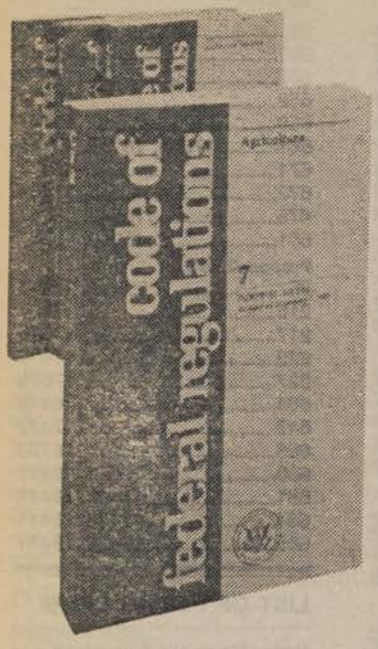
50 CFR

91.....18699
301.....16268
651.....17298
652.....16274
658.....19147
661.....17264, 18702, 19149
671.....17577
672.....17404
675.....15949, 18367
691.....15949, 18367
Proposed Rules:
25.....17613
215.....17307
217.....17615
222.....17615
227.....17615
604.....16419
642.....17422
663.....18723
680.....17422, 18411
681.....17422, 18411
684.....17422, 18411
685.....17422, 18411

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List May 20, 1987



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