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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to delegate the authority contained in section 1416 of the Food Security Act of 1985.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Siegler, Deputy Assistant General Counsel, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250 (202) 447–6035.

SUPPLEMENTARY INFORMATION: Section 1416 of Pub. L. No. 99–198, the Food Security Act of 1985, authorizes the Secretary to make grants to upgrade 1890 land-grant college extension facilities. This document delegates that authority to the Assistant Secretary for Science and Education and to the Administrator of the Extension Service.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by Pub. L. No. 96–354, the Regulatory Flexibility Act and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 reads as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.30 is amended by adding paragraph (a)(89) to read as follows:

§ 2.30 Delegations of authority to the Assistant Secretary for Science and Education.

* * * * *

(a) * * *

(89) Make grants, under such terms and conditions as the Assistant Secretary determines, to eligible institutions for the purpose of assisting such institutions in the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings, to provide adequate facilities to conduct extension work, and issue rules and regulations as necessary to carry out this authority (7 U.S.C. 3224).

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education

3. Section 2.108 is amended by adding paragraph (a)(29) to read as follows:

§ 2.108 Administrator, extension service.

(a) * * *

(29) Make grants, under such terms and conditions as the Administrator determines, to eligible institutions for the purpose of assisting such institutions in the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings, to provide adequate facilities to conduct extension work, and issue rules and regulations as necessary to carry out this authority (7 U.S.C. 3224).

For Subpart C:

Clayton Yeutter,
Secretary of Agriculture.

Date: July 15, 1989.

For Subpart N:

Robert W. Long,
Deputy Assistant Secretary for Science and Education.

Date: June 9, 1989.

[FR Doc. 89–17206 Filed 7–21–89; 8:45 am]
BILLING CODE 3410–14–M

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV–89–044]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Temporary Relaxation of Handling Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting without modification as a final rule an interim final rule, which relaxed the minimum size requirement for shipments of domestic and imported white seedless grapefruit from size 48(3$^{9}/_{16}$ inches in diameter) to size 56 (3$^{5}/_{16}$ inches in diameter). In addition, that rule relaxed the minimum external grade requirement for domestic and import shipments of pink and white seedless grapefruit from Improved No. 2 to U.S. No. 2 Russet. Also, the rule relaxed the minimum grade requirement for domestic shipments of Valencia and other late type oranges from U.S. No. 1 to U.S. No. 1 Golden. The grade, size, and maturity of the remaining 1988–89 season Florida crop and market demand conditions for these fruits warranted this action.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No.

905, both as amended [7 CFR Part 905], regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 shippers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the marketing order for these citrus fruits. In addition, there are approximately 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida, and approximately 26 importers who import grapefruit into the United States. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A minority of these shippers and a majority of the producers and importers may be classified as small entities.

Grade and size requirements for the Florida citrus fruits covered under this marketing order are specified in 905.306 Florida Orange, Grapefruit, Tangerine, and Tangelo Regulation 6 [7 CFR 905.306]. This regulation was issued on a continuing basis subject to modification, suspension, or termination by the Secretary. Paragraph (a) of § 905.306 provides that no handler shall ship between the production area and any point outside thereof, in the continental United States, Canada, or Mexico, specified varieties of oranges, grapefruit, tangerines and tangelos unless such varieties meet the minimum grade and size requirements prescribed in Table I of this section.

An interim final rule amending paragraph (a) of § 905.306 was issued May 12, 1989, and published in the **Federal Register** [54 FR 21407, May 18, 1989]. That rule provided that interested persons could file written comments through June 19, 1989. No comments were received.

Paragraph (a) of § 905.306 was amended by temporarily relaxing the minimum size requirement for domestic and import shipments of white seedless grapefruit from size 48 (3$^{9}/_{16}$ inches in diameter) to size 56 (3$^{5}/_{16}$ inches in diameter). Also, the minimum external grade requirements for domestic and import shipments of pink and white seedless grapefruit were temporarily relaxed by the interim final rule from Improved No. 2 to U.S. No. 2 Russet. In addition, the minimum grade requirement for domestic shipments of Valencia and other late type oranges was temporarily relaxed from U.S. No. 1 to U.S. No. 1 Golden. The relaxations for grapefruit are effective for the period May 15, 1989, through August 20, 1989, and for Valencia oranges for the period July 1, 1989, through September 24, 1989, by which ending dates 1988–89 season shipments of these fruits will be finished.

As specified in § 905.306, tighter minimum grade and size requirements will resume for pink and white seedless grapefruit effective August 21, 1989, and for Valencia oranges September 25, 1989. The resumption of tighter handling requirements for 1989–90 season shipments are based upon the maturity, size, quality, and flavor characteristics of these fruits early in their shipping seasons.

The Citrus Administrative Committee (committee), which administers the program locally, met April 18, 1989, and unanimously recommended the relaxations. The committee recommended the relaxed size requirements based on an analysis of the then current and prospective marketing conditions as well as a projection of the size composition and maturity level of the crop remaining for shipment at that time. The committee reported that it expected that by May 15, size 56 grapefruit, and by July 1, Valencia and other late type oranges, would be of a satisfactory quality, maturity, and flavor to be shipped to fresh markets. Also, size 56 white seedless grapefruit receives increased consumer acceptance late in the season. The grade relaxations pertained only to the external quality of the fruit, and they did not change internal requirements. The committee's recommendation to relax the grade and size requirements followed the practice of prior years of lowering such requirements when the fruit had reached an acceptable level of quality, maturity, and flavor, and was designed to maximize shipments to fresh market channels.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Committee meetings are open to the public and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Some Florida orange and grapefruit shipments are exempt from the minimum grade and size requirements effective under the marketing order. Shippers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, shippers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Section 8e of the Act [7 U.S.C. 608e–1] provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are currently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area.

Grapefruit import requirements are specified in § 944.106 [7 CFR Part 944], and are effective under section 8e of the Act. That section requires that grapefruit imported into the United States must meet the same minimum grade and size

requirements as those specified for the various varieties of Florida grapefruit in Table I of paragraph (a) in § 905.306. Since this action maintains relaxed minimum grade and size requirements for domestically produced white and pink seedless grapefruit, the relaxed requirements are automatically maintained for imported white and pink seedless grapefruit. An exemption provision in the grapefruit import regulation permits persons to import up to 10 standard packed ⅘-bushel cartons exempt from the import requirements. In addition, import requirements for oranges (§ 944.312) are based upon requirements established for Texas oranges issued under M. O. 906 (7 CFR Part 906). Accordingly, the findings and determinations with respect to imports of grapefruit and oranges contained in Part 944 of the regulations will not be changed by this action and no changes to these provisions of Part 944 are made necessary by this action.

Relaxation of the handling requirements for Florida and imported grapefruit and Florida Valencia oranges was designed to maximize domestic shipments to meet consumer needs. Therefore, the Department's view is that the impact of this action upon producers, shippers, and importers was beneficial because it enabled shippers to continue to provide grapefruit and oranges consistent with buyer requirements. The application of minimum grade and size requirements to Florida grapefruit and oranges and imported grapefruit over the past several years, has resulted in fruit of acceptable size, maturity, and flavor being shipped to fresh markets throughout the season.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the interim rule, as published in the **Federal Register** (54 FR 21407) on May 18, 1989, is hereby made a final rule and will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action maintains relaxed handling requirements currently in effect for Florida grapefruit and oranges and imported grapefruit; (2) Florida grapefruit and orange shippers are aware of the relaxations, which were recommended by the committee at a public meeting and they will need no additional time to continue complying with the relaxed requirements; (3) The end of shipments of the 1988–89 season Florida grapefruit and Valencia orange crops is approaching; (4) The grade and size relaxations for imported grapefruit are mandatory under section 8e of the Act; and (5) No useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR Part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of § 905.306, which was published in the **Federal Register** [54 FR 21409, May 18, 1989], is adopted as a final rule without change.

Note: This section will appear in the Code of Federal Regulations.

Dated: July 18, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–17207 Filed 7–21–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 981

[Docket No. FV–89–060]

Almonds Grown in California; Order Directing That a Referendum be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of Referendum Agents To Conduct the Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of California almonds to determine whether they favor continuance of the marketing agreement and order regulating the handling of almonds grown in the State of California.

DATES: The representative production period is from July 1, 1988, through June 30, 1989. The referendum will be conducted from August 7 through August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order and Agreement No. 981, as amended [7 CFR Part 981], and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], it is hereby directed that a referendum be conducted within the period August 7 through August 21, 1989, among the growers who, during the period July 1, 1988, through June 30, 1989, (which period is hereby determined to be a representative period for purposes of such referendum), were enaged in the production area in the production of almonds covered by the said amended marketing agreement and order to ascertain whether continuance of the said amended order is favored by the growers.

Then Almond Board of California (Board), the agency responsible for local administration of the marketing order, is considering possible amendments to the marketing order. However, before an amendatory hearing is requested, the Board would like to determine the level of grower support for the marketing order. Therefore, the Board unanimously voted at its May 11, 1989, meeting, to request the Secretary to conduct a continuance referendum.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the growers of almonds voting in the referendum and growers of less than two-thirds of the volume of almonds represented in the referendum favor continuance. However, in evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referendum but also all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate

an order whenever the Secretary finds that a majority of all growers favor termination, and such majority produced for market more than 50 percent of the commodity covered by such order.

Martin J. Engeler and Gary D. Olson, California Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1755 N. Gateway, Suite B, Fresno, California 93727, are hereby designated as referendum agents of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" [7 CFR Part 900.400 *et seq.*].

Copies of the text of the aforesaid amended marketing order may be examined in the offices of the referendum agents or at the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456.

Ballots to be cast in the referendum may be obtained from the referendum agents and from their appointees.

Authority: Agricultural Marketing Agreement Act of 1937, as amended, Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: July 18, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89–17205 Filed 7–21–89; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1421

Grains and Similarly Handled Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends 7 CFR Part 1421 to set forth the manner in which the Commodity Credit Corporation (CCC) will make storage payments with respect to 1985-crop Farmer-Owned Reserve (FOR) corn and grain sorghum loans which are extended by producers. This interim rule also amends 7 CFR Part 1421 to provide that sample grade grain may not be pledged as collateral for CCC price support loans.

These amendments are necessary in order to provide for the enhanced administration of CCC programs and to provide affected producers with notice of CCC's determinations with respect to such loans.

DATES: Effective July 24, 1989. Comments must be received by August 23, 1989 in order to be assured of consideration.

ADDRESS: Comments concerning this interim rule should be directed to Thomas VonGarlem, Assistant Deputy Administrator, State and County Operations, USDA–ASCS, Room 3096, South Building, P.O. Box 2415, Washington, DC 20013.

The Regulatory Impact Analysis describing the options considered in developing this interim rule is available on request from Thomas VonGarlem at this address.

FOR FURTHER INFORMATION CONTACT: Thomas VonGarlem, (202) 447–6761.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been designated as "non-major".

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human evironment; therefore, neither an environmental assessment nor an environmental impact statement is needed.

The title and number of the Federal Assistance Program to which this interim rule applies are: Title-Commodity Loans and Purchases, Number 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that this action will not increase the federal paperwork burden for individual, small businessmen and other persons. The Commodity Credit Corporation (CCC) is also not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this interim rule. Therefore, the Regulatory Flexibility Act is not applicable.

Keith Bjerke, Executive Vice President, Commodity Credit Corporation hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities because the action taken in this rule will reduce uncertainty in the operation of the program and will have the effect of stabilizing commodity supply and demand situations.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 23, 1983).

Since producers are currently making marketing decisions with respect to commodities which may be affected by this rule, the provisions of this rule are effective upon publication in the **Federal Register**. It has been determined that it would not be in the public interest to engage in a proposed rule making since producers must be able to make immediate marketing decisions with respect to loans which are affected by these changes. Comments are, however, requested with respect to this interim rule and will be taken into consideration when developing the final rule.

Background

CCC makes available price support loans to producers of wheat and feed grains in accordance with 7 CFR Part 1421. On September 1, 1988 (53 FR 34004) CCC published a final rule in the **Federal Register** which amended such part to provide that certain crop year CCC price support loans could be extended. The following statement was included in that final rule:

II. Background of Proposed Changes to 7 CFR Part 1421

CCC makes available price support to eligible producers through a variety of means, including purchase agreements and nonrecourse loans. Producers who comply with applicable program requirements are afforded the opportunity to obtain CCC price support loans for a term determined by CCC. These loans are made available in accordance with several sections of the Agricultural Act of 1949, as amended (the 1949 Act). The terms and conditions of the loans are set forth in the loan agreement. See 7 CFR 1421.1–1421.32 for feed grain, rice, soybean and wheat price support loans and purchase agreements (53 FR 20280, June 3, 1988). In accordance with the provisions of the loan agreement and 7 CFR 1421.6, these loans mature no later than the last day of the ninth calendar month following the month in which the loan application is made, unless extended by CCC. In the event CCC determines to extend such loans, the producer receives actual notice of the terms and conditions of the offered extension. The producer is not, however, required to accept the offered extension.

In accordance with section 110 of the 1949 Act CCC may make available extended price support loans to producers who have specified maturing regular wheat and feed grain price support loans. These loans are referred to as Farmer-Owned Reserve (FOR) loans. The minimum and maximum levels of the wheat and feed grain reserves are determined annually. The terms and conditions of the loans are set forth in the loan agreement. See 7 CFR 1421.740–54 (53 FR 11239, April 26, 1988).

Section 110 of the 1949 Act provides that, whenever the total quantity of wheat pledged

as collateral for FOR loans is less than 300 million bushels and the market price for wheat is less than 140 percent of the current price support level, entry into the reserve must be allowed. Currently, 395 million bushels are in the FOR wheat reserve and wheat prices are in excess of 140 percent of the current price support rate. With respect to feed grains, the minimum FOR level is 450 million bushels and the minimum market price is 140 percent of the current price support rate. Currently, 1.06 billion bushels of corn, 54 million bushels of sorghum and 50 million bushels of barley are in the FOR feed grain reserve. Corn prices exceed 140 percent of the current price support rate.

Prior to the enactment of the Food Security Act of 1985 (the 1985 Act), which amended section 110 of the 1949 Act, the term of a FOR loan could not exceed 5 years. The 1985 Act amended section 110 to provide for FOR loans of not less than 3 years with extensions as warranted. However, prior to this amendment, producers possessed a substantial number of FOR loans which were maturing and, due to market conditions, the loan collateral would be forfeited to CCC. In order to provide greater flexibility to producers, CCC established the Special Producer Storage Loan Program in accordance with the CCC Charger Act, as amended. The terms and conditions of these loans are set forth in the loan agreement. See 7 CFR 1421.900–1421.917.

In January and March 1988, after evaluating existing and projected supply and demand conditions for wheat and feed grains, CCC determined and announced that certain price support loans would be extended and that certain other loans would not be extended. Accordingly, with respect to loans that were not extended, producers are required to comply with the terms and conditions of their loan agreements which require repayment of the loan or forfeiture to CCC of the loan collateral by a specified date.

Following the announcement of these decisions, the State of Minnesota and several Minnesota producers brought an action in the United States District Court of the District of Minnesota which alleged that the actions taken concerning these loans were not made in accordance with statutory requirements. Among the allegations, plaintiffs contend that these decisions were not made in accordance with the Administrative Procedure Act, as amended, 5 U.S.C. 551 et seq. Subsequently, on July 22, 1988, based upon the United States Magistrate's Report and Recommendation, the United States District Court entered an order enjoining the use of two intra-agency notices which were used by the Agricultural Stabilization and Conservation Service (ASCS) to notify State and County ASCS Offices of these decisions.

It is the position of CCC that the provisions of the Administrative Procedure Act, as amended, are not applicable to these decisions since 5 U.S.C. 553(a)(2) specifically exempts agencies from conducting proposed rulemaking actions with respect to "a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." It is also the position of CCC that the Statement of Policy signed by the Secretary of Agriculure on July 20, 1971 (see 36 FR 13804), which provided that, in certain specified instances, proposed rulemaking would be undertaken by all agencies of the Department notwithstanding the exemption set forth in 5 U.S.C. 553(a)(2) is not applicable to the types of actions involved in these decisions since proposed rulemaking actions would be impracticable.

However, in order to alleviate the concerns of interested parties regarding the procedure which CCC utilized in making these decisions and to provide market stability, comments were requested with resepct to proposed amendments to the regulations of CCC which are set forth in Title 7 of the Code of Federal Regulations. These proposed amendments would amend 7 CFR 1421.6 to provide that 1987 and subsequent crop price support loans for feed grains, rice, soybeans and wheat would not be subject to any additional extension of the original loan term of nine months. Section 1421.6 would also be amended to provide the 1985 and 1986 crop loans of wheat, barley, oats and soybeans would not be extended at maturity and that producers with 1985 and 1986 crop corn and grain sorghum loans which mature on March 31, 1988 through and including December 31, 1988 would be provided the opportunity to extend such loans for one year. The proposed rule would also amend the FOR program regulations which are set forth at 7 CFR 1421.741 to provide the 1984 crop FOR loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year and that 1983 and prior crop year FOR loans would not be extended.

The proposed rule would also amend the regulations at 7 CFR 1421.900–1421.917 which set forth the regulations governing the special producer storage loan program. The basis for the program was explained in the preamble of the rule which set forth the initial regulations which established the program:

The Farmer-Owned Grain Reserve Program has been implemented for wheat, corn, barley, sorghum, and oats in accordance with the provisions of section 110 of the Agriculture Act of 1949, as amended. Producers with matured grain reserve loans will have utilized the entire period of their reserve loan agreement which is available for the commodity. Normally, producers with matured grain reserve loans would be required to redeem the loan collateral or forfeit the collateral to CCC in full satisfaction of the loan obligation. However, under the Special Producer Storage Loan Program, producers will be given the opportunity to pledge the collateral securing a matured grain reserve loan as collateral for a loan obtained under the new program. 50 FR 16221 (April 25, 1985).

The program was determined to be necessary since, at that time, section 110 of the 1949 Act specified that FOR loan agreements could not be for a term in excess of 5 years. Section 110 of the 1949 Act was subsequently amended by the Food Security Act of 1985 by deleting the 5-year maximum limitation and by providing that FOR loans could be extended as warranted by market conditions. Accordingly, it has been determined that this program is no longer necessary. Therefore, the proposed rule would delete the regulations which set forth the provisions which were used to make Special Producer Storage Loans and would also specify that maturing Sepecial Producer Storage Loans will not be extended.

The quantities of outstanding CCC loan collateral as of August 17, 1988 which would be affected by the proposed amendments are as follows:

[Million of bushels]

Program crop year	Wheat	Corn	Sorghum	Barley	Oats	Soybeans
Regular Loans:						
1985	6	*76	*4	2	0	2
1986	23	*454	*27	11	0	7
1987	29	532	11	12	0	44
Farmers-Owned Reserve (FOR) Loans:						
1983 & Prior [1]	166	0	0	3	0	
1984	*71	281	*11	*14	*0	
1985 [2]	158	781	43	33	0	
Special Producer Storage (SPSL) Loans	0	110	17	25	1	

(Asterisks denote loans which would be available for extension.)
[1] These loans do not begin to mature until 1990.
[2] These loans do not begin to mature until 1989.

Basis For CCC's Actions Regarding CCC Price Support Loans

In January and March 1988, CCC announced that certain CCC price support loans would be extended and that certain loans would not be extended. CCC also announced that 1986 crops of wheat and feed grains would not be allowed entry into the FOR. These decisions were based upon market conditions which existed at that time. These decisions were based upon expected 1988 normal crop production. In making these determinations, CCC took into account the impact the decisions would have on

producers of wheat, feed grains and soybeans as well as on the ultimate users of these products.

At that time, excessive surpluses of these crops existed as the result of overproduction in previous years. These excessive surpluses had occurred due in larger part to the loss of export markets from 1981–1985. In order to reduce these excessive surpluses, the Food Security Act of 1985 amended the 1949 Act to mandate acreage reduction programs for wheat and feed grains and also mandated the use of export enhancement programs. Accordingly, CCC's decisions in January and March 1988 were based in large part upon a concern to maintain regained export markets. The U.S. share of export markets for wheat had increased from 29 percent in the 1985–1986 marketing year to 42 percent in the 1987–1988 marketing year, still below the 1981–1982 marketing year level of 48 percent. With respect to corn, such U.S. share had increased from 58 percent in the 1985–1986 marketing year to 78 percent in 1987–1988 marketing year, still below the 1979–1980 marketing year level of 82 percent. By retaining these markets through the availability of grain from CCC inventory and from free stocks, U.S. producers would be able to market larger quantities of 1988 and subsequent crops. At that time, estimated 1988 crop production was projected to be less than the combined total of 1988 projected uses and would result in sharp declines in both total carryover stocks and free stocks. Accordingly, access to CCC stocks and loan collateral was determined to be necessary.

However, the production of 1988 crops of many commodities, including wheat, feed grains and soybeans, has been severely reduced by the drought conditions which exist throughout major agricultural regions of the United States. For example, on May 10, 1988 the estimated 1988 production of corn was 7.3 billion bushels. These estimates have declined to 5.2 billion bushels on July 12, 1988 and to 4.48 billion bushels on August 11, 1988. Thus, at this time, even greater accessibility to CCC inventory and loan collateral is necessary to meet demand than previously was determined to exist in January and March 1988. Similarly estimated wheat production has fallen from 2.17 billion bushels to 1.82 billion bushels. While soybean production had fallen from 1.88 billion bushels in May 1988 to 1.47 billion bushels in August 1988.

The decrease in feed grain and soybean production, together with the reduction in other feed supplies, has caused significant and unexpected increases in feed prices for livestock and poultry producers and has also resulted in the unavailability of feed in some regions of the country. These factors have resulted in the liquidation of livestock herds and poultry flocks which has adversely affected producers' income.

The United States' supply of wheat has also been reduced due to the 1988 drought. Coupled with the expansion of U.S. export markets during the past year, the drought has resulted in the smallest supply of U.S. wheat in nearly a decade. Durum wheat production was reduced 41 percent from 1987, while other spring wheat production is down 53 percent. Similar reductions have occurred as a result of the drought in 1988 oat and barley production. Barley production is down 45 percent and oat production, also down 45 percent will be the lowest since 1866. Accordingly, substantial quantities of oats will be imported into the U.S. during the next year.

In summary, early 1988 estimates showed that the 1988 use of wheat, feed grain and soybeans would exceed 1988 production thereby necessitating access to CCC inventory and CCC loan collateral. The effects of the 1988 drought further necessitate such accessibility.

In order to ensure orderly marketing of these commodities, including 1988 production, it has been determined that some crop year loans with 1988 maturity dates will be extended until 1989. By allowing some crop year loans to mature in accordance with the loan agreements previously entered into by producers with CCC and by allowing producers to extend certain other loans, CCC's action will provide: (1) Producers the opportunity to deliver grain into the market in an orderly fashion with very minimal forfeitures to CCC; (2) Purchasers, both domestic and foreign, with reliable supplies, and (3) Parties who transport and handle such commodities sufficient time to determine the most efficient manner to move these commodities from the producer to a consumer.

Section 110 of the 1949 Act provides for the implementation of "a program under which producers of wheat and feed grains will be able to store wheat and feed grain when such commodities are in abundant supply, extend the time period for their orderly marketing, and provide for adequate but not excessive carryover stocks to ensure a reliable supply of the commodities." It is generally accepted that an adequate carryover supply of wheat is .75 −1.0 billion bushels and that an adequate carryover supply of corn is 1.5 −2.0 billion bushels. Sections 107D and 105C of the 1949 Act provide, with respect to wheat and feed grains, respectively that if the estimated carryover on the first day of the marketing year for a crop will exceed 1 billion bushels for wheat and 2 billion bushels for corn, acreage reductions programs must be implemented. As of August 29, 1988, ending 1988/89 marketing year wheat stocks are estimated to be 597 million bushels and ending 1988/89 marketing year corn stocks are estimated to be 1.58 billion bushels. Accordingly, assuming that the quantities specified in sections 105C and 107D are adequate carryout quantities, the U.S. will have minimally adequate or less than adequate carryovers of these crops going into the 1989 marketing year. Section 110 of the 1949 Act provides that the FOR program is to be conducted only when wheat and feed grains are in "abundant supply." Such supplies are clearly not abundant and are projected to be below even "adequate carryover" levels. Section 110 also provides that the FOR must be conducted in a manner which does not curtail free market activity. Further entry of grain into the FOR would, by the end of the marketing year, result in record high levels of grain in the FOR and would cause serious market disruptions.

Based upon these estimates, entry of any further crops into the FOR would not only be contrary to market demands but would also violate the provisions of section 110 of the 1949 Act which require that free market activity not be disrupted. Currently the following quantities are in the FOR as of August 17:

[Millions of bushels]

Program crop year	Wheat	Corn	Sorghum	Barley	Oats
1983 and prior	166	0	0	0	0
1984	71	281	11	14	0
1985	158	781	43	33	0
Total	395	1,062	54	50	0

Wheat FOR loans for 1983 and prior crops do not begin to mature until 1990 and 1985 wheat and feed grain FOR loans begin to mature early in 1989. Accordingly, sufficient quantities of FOR loan collateral exist and are in excess of statutory minimums set forth in section 110 of the 1949 Act which must be maintained when price fall below specified levels.

On July 7, 1988, CCC published in the **Federal Register** a proposed notice of determination with respect to the entry of 1988 crops into the FOR. No comments were received during the 30-day comment period. CCC proposed to allow entry into the FOR only if market prices for wheat and feed grains fell below 140 percent of the respective 1988 crop price support rate and if levels in

the FOR fell below 300 million bushels of wheat and 450 million bushels of feed grains. Subsequently, the Disaster Assistance Act of 1988 (the 1988 Act) was enacted principally in response to the 1988 drought. The 1988 Act provided approximately $3.9 billion of disaster related relief measures to producers affected by the 1988 drought and other specified natural disasters.

Included in the 1988 Act were provisions which relate to the FOR Program. Section 303(b) of the 1988 Act provides greater accessibility to FOR stocks which are acquired through the exchange of CCC commodity certificates. Section 303(a) of the 1988 Act provides that, once market prices of a commodity attain the FOR release level during the 1988 marketing year, producers may repay, without penalty, FOR loans during the remainder of such marketing year without regard to market prices. The Joint Explanatory Statement of the Committee of Conference which was prepared in connection with the 1988 Act states as follows:

The conferees believe that the Secretary should operate the Farmer-Owned Reserve in a way that will remove wheat and feed grains from the market during times of surplus supply and increase market supply during times of short supply. Current Farmer-Owned Reserve quantities of wheat and feed grains exceed statutory minimums. The Secretary has previously determined not to allow entry of 1987 crops of wheat and feed grains into the reserve. In making any subsequent determinations as to whether to permit entry of 1988 or other crops of such commodities into the reserve, the Secretary should take into consideration the reduced production of 1988 crops of wheat and feed grains as a result of the drought, the size of the Farmer-Owned Reserve, the impact of such entry upon the availability of these commodities in the marketplace, including, but not limited to consideration of the impact on the domestic livestock and poultry industry, the ethanol industry, and export share.

See 134 Cong. Rec. H. 6474 (daily ed. August 8, 1988).

Accordingly, in addressing the manner in which the FOR is to be conducted, Congress has specifically recognized that statutory FOR minimums have been maintained and that entry of 1987 crops will not be permitted.

Since September 1, 1988, CCC has continued to review supply and demand situations for feed grains. Based upon the decreased production in the United States and throughout the world, supplies of feed grains in the United States are currently less than current and projected demand, as was the case throughout 1988. Accordingly, since January 1, 1989 CCC has not allowed the extension of maturing CCC price support loans. However, CCC has now determined that 1985-crop corn and grain sorghum FOR loans which mature on or after August 31, 1989 may be extended for a period of 6 months. By allowing some crop year loans to mature in accordance with the loan agreements previously entered into by producers with CCC and by allowing producers to extend 1985 crop loans, CCC's action will ensure: (1) Producers the opportunity to deliver grain into the market in an orderly fashion with minimal forfeitures to CCC; (2) purchasers, both domestic and foreign, with reliable supplies, and (3) parties who transport and handle such commodities sufficient time to determine the most efficient manner to move these commodities from the producer to a consumer. In addition, this action will ensure that quantities of feed grains in the FOR will continue to exceed 450 million bushels, as required by section 110 of the 1949 Act when certain market conditions exist. Producers with 1985 crop FOR loans who exercise this option to extend will receive storage payments at a rate of 26.5 cents per bushel annually or .0726 cents per bushel daily. Producers will, in accordance with 7 CFR 1421.741, receive actual notice of this offered extension.

In order to facilitate the handling of 1985 crop loans which are extended by producers, as well as the workload associated with other CCC activities, it has been determined that CCC will make the storage payment earned as a result of this extension at the time of the loan settlement. Accordingly, 7 CFR 1421.750 is amended to reflect the manner in which these storage payments will be made.

In accordance with section 3 of the United States Grain Standards Act Amendments of 1988, the Secretary of Agriculture is required to conduct with respect to the 1989 crop year a pilot program in not less than six multicounty areas which utilizes premiums and discounts for CCC price support loan collateral in order to encourage the production, marketing and exportation of high quality, clean grain. In order to ensure that local and national marketing practices are not adversely affected by such a program, CCC has determined to implement the program on a nationwide basis. As a portion of this program, it was determined that CCC would not accept sample grade grain as collateral for CCC price support loans. Among other benefits, this action will ensure that CCC does not acquire low quality grain through forfeitures which will ultimately be released from CCC inventory into the market. Producers will, therefore, be encouraged to maintain the quality of the grain for sale in the market rather than using nonrecourse price support loans as the method for marketing their low quality grain to CCC. Accordingly, 7 CFR 1421.18 is amended to provide that sample grade grain may not be pledged as collateral for CCC price support loans.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Warehouses.

Accordingly, Title 7 of the Code of Federal Regulations would be amended as follows:

PART 1421—[AMENDED]

1. The authority citation for Part 1421 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441, 1444–1, 1444b, 1445–2, 1445c–2, 1445e, 1446, and 1447; 15 U.S.C. 714b and 714c.

2. 7 CFR 1421.18(b) is revised to read as follows:

§ 1421.18 Warehouse-stored loans.

* * * * *

(b) *Grade requirements.* (1) In order to be eligible to be pledged as collateral for a loan, the commodity must not be "Sample Grade" and must meet the requirements of § 1421.5 and this section.

(2) Barley must grade No. 5 or better except that:

(i) The barley may have the following special grade designations: "Bright"; "Stained"; "Garlicky"; and, in Alaska only, "Tough";

(ii) The barley must not grade "Infested" or have moisture in excess of 14.5 percent unless a supplemental certificate is provided in accordance with § 1421.9; and

(iii) The barley may not have any of the following special grade designations:

(A) Blighted.

(B) Bleached.

(C) Ergoty.

(D) Smutty.

(3)(i) Corn must grade No. 3 or better except that the corn may have the following special grade designations: "Flint", "Flint and dent", or "Waxy"; and

(ii) The corn must not grade "Infested" or have moisture in excess of 15.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(4)(i) Oats must grade No. 3 or better, except that the oats may have the special grade designation "Garlicky";

(ii) The oats must not grade "Smutty"; "Ergoty"; "Bleached"; "Thin"; Tough"; or otherwise be of distinctly low quality; and

(iii) The oats must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(5) Rice must grade No. 5 or better and must not have moisture in excess of 14.0 percent. Rice of special grades shall not be eligible.

(6)(i) Rye must grade No. 2 or better except that the rye may grade No. 3 because of "Thin" rye, or grade No. 3 or No. 4 on the factors of test weight or damaged kernels (total) or both;

(ii) The rye must not grade "Smutty"; "Light Smutty"; "Garlicky"; "Light"; "Light Garlicky"; and

(iii) The rye must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(7)(i) Sorghum must grade No. 4 or better except that the sorghum may have the special grade designation of "Smutty"; and

(ii) The sorghum must not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(8)(i) Soybeans must grade No. 4 or better;

(ii) The soybeans must be adjusted for foreign material exceeding 1 percent;

(iii) The soybeans may not grade "Garlicky"; and

(iv) The soybeans may not grade "Infested" or have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9.

(9)(i) Wheat must grade No. 5 or better;

(ii) If the wheat is of the class "Mixed Wheat", the wheat must consist of mixtures of grades of eligible wheat as provided in paragraph (b)(9)(i) of this section, if such mixtures are the result of natural conditions;

(iii) The wheat may have the special grade designations "Garlicky", "Smutty", or "Lightly Smutty";

(iv) The wheat must not grade "Ergoty", or "Treated"; and

(v) The wheat must not grade "Infested" or have moisture in excess of 13.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

3. 7 CFR 1421.750(f) is added to read as follows:

§ 1421.750 Storage Payments.

* * * * *

(f) Notwithstanding paragraph (a) of this part or any other provision of this part, producers who extend 1985-crop corn and grain sorghum grain reserve loans, which mature on or after August 31, 1989, shall receive storage payments earned as a result of this extension at the time the loan is settled by the producer through either the forfeiture of the loan collateral or the repayment of the loan.

Signed at Washington, DC, on July 14, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-17211 Filed 7-21-89; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-07-AD; Amdt. 39-6268]

Airworthiness Directives; British Aerospace (BAe) PLC, Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) PLC, Jetstream Model 3101 airplanes, which supersedes AD 87-07-02, Amendment No. 39-5579. AD 87-07-02 requires a life limitation on the autopilot elevator trim cable of 2,000 hours. Subsequent to the issuance of AD 87-07-02, another control cable failed at 1,475 hours. Failure of this cable can cause either a nose up trim indication on the flight deck console without affecting the elevator trim tabs, or an irreversible nose down trim, which may lead to flight with excessive control force and loss of airplane control. It is, therefore, necessary to reduce the cable life limit to 1,000 hours to prevent the development of this unsafe condition.

DATES: *Effective Date:* August 24, 1989. *Compliance:* As prescribed in the body of the AD.

ADDRESSES: BAe Alert Service Bulletin (ASB) Jetstream 22-A-JA861023, Rev 1, dated January 6, 1989, applicable to this AD may be obtained from British Aerospace (BAe) PLC, Manager, Product Support, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; Telephone (44-292) 79888; or British Aerospace Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington DC 20041; Telephone (703) 435-9100. This information may also be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30; or Mr. John P. Dow, Sr., Project Support Section-Foreign, ACE-109, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring changes to the life limit of the autopilot elevator trim servo cable on certain BAe Jetstream Model 3101 airplanes was published in the Federal Register on April 6, 1989 [54 FR 13893]. The proposal resulted from AD 87-07-02, Amendment Number 35-5579, published in the Federal Register on March 13, 1987 (52 FR 7823), which required replacement of the elevator trim servo cable on BAe Jetstream Model 3101 airplanes equipped with Sperry SPZ-200B or SPZ-500 autopilot installations after 2,000 hours time-in-service (TIS). Subsequent to the issuance of AD 87-07-02, another cable was found broken at 1,475 hours TIS. Consequently, BAe issued ASB Jetstream 22-A-JA861023, Rev 1, dated January 6, 1989, which changes the life limit of the autopilot elevator trim servo cable. The Civil Aviation Authority (CAA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom (UK), has classified this ASB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under UK registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA-UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of BAe ASB Jetstream 22-A-JA861023, Rev 1, dated January 6, 1989, and the mandatory classification of this ASB by the CAA-UK, and concluded that the condition addressed by BAe ASB Jetstream 22-A-JA861023, Rev 1, dated January 6, 1989, was an unsafe condition

that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject. Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves 2 airplanes at an approximate cost of $560 per airplane, for a total fleet cost of $1,120 each time that the AD becomes due.

Therefore, the cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant impact on any small entities operating these airplanes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of 14 CFR Part 39 of the FAR as follows:

PART 39—[AMENDED]

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

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

2. By superseding AD 87-07-02, Amendment No. 39-5579, with the following new AD:

§ 39.13 [Amended]

British Aerospace (BAe) PLC: Applies to Jetstream Model 3101 (all serial numbers) airplanes equipped with Sperry SPZ-200B or SPZ-500 autopilot installations.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent the possible loss of elevator trim control, accomplish the following:

(a) For all airplanes on which the autopilot elevator trim servo cable has accumulated 900 or more hours time-in-service (TIS) on the effective date of this AD, within the next 100 hours TIS and thereafter at intervals not to exceed 1,000 hours TIS, replace the elevator trim servo cable, ET1, BAe Part Number 137187E472, in accordance with BAe Mandatory Alert Service Bulletin Jetstream 22-A-JA861023, Rev 1, dated January 6, 1989.

(b) For all airplanes on which the autopilot elevator trim servo cable has accumulated less than 900 hours TIS on the effective date of this AD, at or before reaching 1,000 hours TIS and thereafter at intervals not exceeding 1,000 hours TIS, replace the autopilot elevator trim servo cable, ET1, BAe Part Number 137187E472, in accordance with BAe Mandatory Alert Service Bulletin Jetstream 22-A-JA861023, Rev 1, dated January 6, 1989.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace PLC, Manager, Product Support, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; or British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041; or may examine these documents at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on August 24, 1989.

Issued in Kansas City, Missouri, on July 7, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17242 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-13-AD; Amdt. 39-6272]

Airworthiness Directives; Piper Models PA-23, PA-23-160, PA-23-250, PA-23-235, PA-E23-250 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD), 88-21-07 which requires periodic inspection and repair, as required, of the fuel vent/drain lines, the thermos type fuel cell caps, and the fuel filler compartment covers on all Piper Model PA-23 series airplanes. This amendment deletes from the applicability those PA-23-250 airplanes with serial numbers (S/N's) 27-7654001 through 27-8154030 which incorporate fuel caps flush with the wing surface. The FAA has determined that airplanes which incorporate fuel caps flush with the wing surface are not subject to water contamination.

DATES: *Effective:* August 22, 1989. *Compliance:* As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567-4366. This information may also be examined in the Rules Docket, Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Goodall, Aerospace Engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: This amendment revises AD 88-21-07, Amendment 39-6042 [53 FR 38000; September 29, 1988], which currently requires periodic inspection and repair, as required, of the fuel vent/drain lines, the thermos type fuel cell caps, and the fuel filler compartment covers on all Piper PA-23 series airplanes. After issuing Amendment 39-6042, the FAA determined that Piper Aircraft Corporation implemented a design change in 1976 which elimiated the fuel filler compartment covers, the recessed fuel filler ports, the thermos type fuel caps and the drain system on certain PA-23 series airplanes. This design incorporates a vent system and fuel caps that are flush with the wing surface. This design change occurred

after the issuance of Piper Service Bulletin No. 340, dated May 24, 1971, which was the basis of AD 88-21-07. Therefore, the FAA is revising AD 88-21-07 to delete all those Model PA-23-250 airplanes manufactured with S/N's 27-7654001 through 27-8154030 from the applicability listing in the AD.

Since this amendment reduces the applicability of the AD and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and the amendment may be made effective in less than 30 days. The regulations adopted herein do not have substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this revision involves approximately 715 airplanes. The cost of implementing this revision is negligible. The cost of complying with this AD will not have a significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption **ADDRESSSES** at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

2. By revising AD 88-21-07, Amendment 39-6042 [53 FR 38000; September 29, 1988], to read as follows:

§ 39.13 [Amended]

Piper: Applies to Models PA-23, PA-23-160, PA-23-250, PA-23-235 and PA-E23-250 (all serial numbers) airplanes certificated in any category except Model PA-23-250 airplanes, serial numbers 27-7654001 through 27-8154030.

Compliance: Required within the next 60 calendar days after the effective date of this AD and at intervals not to exceed 12 calendar months thereafter, unless already accomplished per the unrevised version of this AD. To reduce the possibility of precipitation and/or wash water from entering the fuel filler compartment and leaking into the fuel cell resulting in engine failure, accomplish the following:

(a) Inspect the fuel vent/drain lines, the thermos type fuel cell caps, and the fuel filler compartment covers on both main fuel cell systems and, if installed, both auxiliary fuel cell systems in accordance with the instructions in Piper Service Bulletin (SB) No. 340, dated May 24, 1971.

(b) If any defects are found, correct them before further flight.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

This amendment revises AD 88-21-07, Amendment 39-6042.

This amendment becomes effective on August 22, 1989.

Issued in Kansas City, Missouri, on July 11, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17243 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-123-AD; Amdt. 39-6278]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric CF6-80C2 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires modification of seals in the area of the outboard strut trailing edge access doors. This amendment is prompted by the discovery that hydraulic fluid leakage in the aft strut area can penetrate the firewall seal and come in contact with the engine primary exhaust nozzle, creating the potential for a fire.

EFFECTIVE DATE: August 11, 1989.

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

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Propulsion Branch, ANM-140S; telephone (206) 431-1970. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Investigations by the manufacturer have revealed the existing firewalls in the outboard strut trailing edge installation on certain Model 747 airplanes equipped with General Electric CF6-80C2 engines can allow hydraulic fluid leakage in the aft strut area to penetrate the firewall seal and come in contact with the engine primary exhaust nozzle. This condition, if not corrected, creates the potential for a fire.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-54A2129, dated June 8, 1988, which describes a modification of the existing seals and addition of block seals and splash plates in the outboard strut trailing edge fairing door/inconel pan area.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires modification of seals and installation of new seals and splash plates in the outboard strut trailing edge fairing door/inconel pan area, in accordance with the service bulletin previously described.

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

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance

with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it 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 it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the regulatory docket (otherwise, and evaluation is not required). A copy of it, if filed, may be obtained from the Rule Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 747 series airplanes equipped with General Electric CF6–80C2 engines, as listed in Boeing Alert Service Bulletin 747–54A2129 dated June 8, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate the potential for a fire due to an inadequately sealed firewall in the outboard struts, accomplish the following:

A. Within the next 60 days after the effective date of this AD, modify the existing seal configuration in the aft outboard strut trailing edge fairing door/inconel pan area in accordance with the accomplishment instructions of Boeing Alert Service Bulletin 747–54A2129, dated June 8, 1989.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21. 199 to operate airplanes to a base in order to comply with the requirements of this AD.

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

This amendment becomes effective August 11, 1989.

Issued in Seattle, Washington, on July 17, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–17240 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–205–AD; Amdt. 39–6277]

Airworthiness Directives; Boeing Models 727–100C and 727C Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Models 727–100C and 727C series airplanes, which requires inspection of the main cargo door lower still latch support fittings for cracks, and replacement of the fittings, if necessary. This proposal is prompted by reports of cracks in latch support fittings. Cracking in multiple fittings, if allowed to grow, could result in rapid decompression during flight and in-flight loss of the main cargo door.

EFFECTIVE DATE: August 31, 1989.

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

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Airframe Branch, ANM–120S; telephone (206) 431–1525. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection for cracks and replacement, if necessary, of the main cargo door lower still latch support fittings on Boeing Models 727–100C and 727C airplanes, was published in the **Federal Register** on February 14, 1989 (54 FR 6689). The comment period for the proposal closed April 19, 1989.

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

One comment was received which requested the repetitive inspection interval include a 3,000 flight hour interval as an alternative to the proposed 3,000 flight cycle interval because some operators schedule maintenance on hours instead of flight cycles. The FAA disagrees with this specific request because Boeing Model 727 flights may be less than 1 hour. The short flight would unacceptably increase the inspection interval. Paragraph E. of the final rule contains provisions for an operator to request alternate means of compliance based on an operator's average flight time.

The Air Transport Association (ATA) of America stated that no ATA member expressed objection to the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 129 Model 727 cargo airplanes of the affected design in the worldwide fleet. It is estimated that 83 airplanes of U.S. registry will be affected by this AD, that it will take approximately 28 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $92,960.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Models 727–100C and 727C (cargo) series airplanes, as listed in Boeing Alert Service Bulletin 727–53A0177, Revision 1, dated August 27, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent in-flight loss of the main cargo door, accomplish the following:

A. Prior to the accumulation of 25,000 flight cycles or within the next 3,000 flight cycles after the effective date of this AD, whichever occurs later, conduct a close visual or an eddy current inspection of the eight main cargo door latch support fittings, in accordance with Figure 1 of the Boeing Alert Service Bulletin 727–53A0177, Revision 1, dated August 27, 1987.

B. If a cracked latch support fitting is found, prior to further flight, replace the fitting with a fitting made of 7075–T73 material, in accordance with Figure 2 or 3 of Boeing Alert Service Bulletin 727–53A0177, Revision 1, dated August 27, 1987.

C. Repeat the inspection required in paragraph A., above, at intervals not to exceed 3,000 flight cycles.

D. Replacement of a latch support fitting with the 7075–T73 fitting specified in Figure 2 or 3 of Boeing Alert Service Bulletin 727–53A0177, Revision 1, dated August 27, 1987, constitutes terminating action for the repetitive inspections required for that fitting.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

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

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

This amendment becomes effective August 31. 1989.

Issued in Seattle, Washington, on July 17, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–17241 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASO–17]

Revocation of Transition Area, Andrews, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes the Andrews, SC, transition area. The transition area was established to provide controlled airspace protection for Instrument Flight Rules (IFR) operations at the Andrews Municipal Airport. The Punch Nondirectional Radio Beacon (NDB) which supports the only Standard Instrument Approach Procedure (SIAP) to the airport has been decommissioned. Thus, a need no longer exists for the transition area. Concurrent with revocation of the transition area, the operating status of the airport will change from IFR to Visual Flight Rules (VFR).

EFFECTIVE DATE: 0901 UTC, August 24, 1989.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

SUPPLEMENTARY INFORMATION:

History

On May 4, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the Andrews, SC, transition area (54 FR 19196). The Punch NDB which supports the only SIAP to the Andrews Municipal Airport has been decommissioned. Thus, a need no longer exists for the transition area. Concurrent with revocation of the transition area, the operating status of the airport will change from IFR to VFR. 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. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes the Andrews, SC, transition area. The transition area was established to provide controlled airspace protection for Instrument Flight Rules (IFR) operations at the Andrews Municipal Airport. The Punch Nondirectional Radio Beacon (NDB) which supports the only Standard Instrument Approach Procedure (SIAP) to the airport has been decommissioned. Thus, a need no longer exists for the transition area.

The FAA had determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Andrews, SC [Removed]

Issued in East Point, Georgia, on June 30, 1989.

Don Cass,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89–17246 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 218

RIN 3320–AA13

Annuity Beginning and Ending Dates

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends Part 218 of its regulations to implement sections 103 and 104 of the Railroad Retirement Solvency Act of 1983, which amended section 5 of the Railroad Retirement Act covering annuity beginning and ending dates, and section 7302 of the Railroad Unemployment Insurance and Retirement Improvement Act which eliminated the last person service disqualification. This final rule also revises Part 218 to simplify the language and make the regulations easier to use.

DATE: July 24, 1989.

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

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 (FTS 386–4513).

SUPPLEMENTARY INFORMATION: The Board's regulations concerning annuity beginning and ending dates were issued in December 1981 and do not reflect the addition of new categories of beneficiaries provided for in Title XI, Subtitle D of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) namely, divorced spouses, surviving divorced spouses and remarried widow(er)s, nor do they reflect amendments made to the Act by the Railroad Retirement Solvency Act of 1983 (Pub. L. 98–76). These amendments generally limited annuity beginning dates for most annuities to a maximum of six months before the application for the annuity was filed. Part 218 is revised to reflect these changes. In addition, Part 218 sets forth in greater detail than present Part 218 the rules restricting when annuities may begin and end.

The Board published Part 218 as a proposed rule on November 3, 1988 (53 FR 44477–44485) and invited comments by December 5, 1988. No comments were received. However, a reviewer within the agency discovered an error in proposed § 218.9(d)(2) which has been corrected to read "The first day of the first full month in which the claimant is age 60 and will accept a reduced annuity." See 45 U.S.C. 231d(a)(iii)(D).

The proposed rule has also been revised to reflect the liberalization in post retirement work restrictions brought about by the Railroad Unemployment Insurance and Retirement Improvement Act of 1988. Pub. L. 100–647, Title VII, Subtitle C. Section 7302 of Pub. L. 100–649 modified the "last person service" disqualification found in section 2(e) of the RRA to permit an individual to begin to receive an annuity while continuing to work for a non-railroad employer. See §§ 218.9, 218.11, 218.26, 218.27, and 218.28.

In this final rule the Board replaces current Part 218 Subpart A, General, with a new Subpart A, General. This Subpart A provides a better explanation of the contents of Part 218, and contains a new § 218.3 which describes the actions the Board takes when notice is received of an employee's disappearance.

The Board also revises the current Part 218 Subpart B: When An Annuity Begins, and portions of Subpart E, When Windfall Benefit Begins and Ends, by replacing it with a new Subpart B which provides a better explanation of the requirements for establishing when any annuity under the Act may begin. New § 218.7 is a redesignation of the current § 218.8 and is revised to explain that the three-month rule for designating an annuity beginning date does not apply to a disability annuity.

The Board revises current Part 218 Subpart C, How Work and Special Payments Affect An Employee Or Spouse Annuity Beginning Date, by replacing it with a new Subpart C, How Work And Special Payments Affect An Employee, Spouse, Or Divorced Spouse Annuity Beginning Date, which provides a better explanation of how work and special payments affect an employee or spouse annuity beginning date.

The Board revises current Part 218 Subpart D, When An Annuity Ends, by replacing it with a new Subpart D which provides a better explanation of the requirements for when any annuity under the Act may end.

The Bureau of Law within the Board is currently involved in a project to revise all regulations for which it has responsibility. It is the aim of the project to incorporate the latest legislative, legal and policy changes while using plain language in order to make the regulations easier to use and understand. As a result, this part has been written to be an integral part of the planned revised and reorganized regulations and may, in certain instances, refer to parts of regulations which are not currently in effect. The Board believes that any minor inconveniences that might arise as a result of publishing the regulations on a part-by-part basis are outweighed by the benefits derived from publishing current, more easily useable and understandable regulations on a consistent basis.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. The information collections associated with this rule have been approved by the Office of Management and Budget.

In order to enable users to check the completeness, accuracy and reasoning behind these revisions to the regulations, Derivation and Distribution Tables follow:

DERIVATION TABLE

New section and name	Current section and name
Part 218—Annuity Beginning And Ending Dates.	Part 218—Annuity Beginning And Ending Dates.
Subpart A—General	
218.1 Introduction	218.1 Introduction (except 2nd and 3rd sentences).
218.2 Definitions	218.2 Definitions (except definition of "Claimant").
218.3 When an employee disappears.—New.	
Subpart B—When An Annuity Begins	
218.5 General rules.	218.5 General rules.
(a) New	
(b)	(b)
218.6 How to choose an annuity beginning date.	218.7 How to choose an annuity beginning date.
(a)	(a)
(b)	(b)
218.7 When chosen annuity beginning date is more than three months after filing date.	218.8 When chosen annuity beginning date is more than three months after filing date.
218.8 When an individual can change the annuity beginning date.	218.9 When an applicant can change the annuity beginning date.
(a)	(a)
(b)	(b)
218.9 When an employee annuity begins.—New	
218.10 When a supplemental annuity begins.	218.6 When a supplemental annuity begins.
218.11 When a spouse annuity begins.—New	
218.12 When a divorced spouse annuity begins.—New	
218.13 When a widow(er) annuity begins.—New	
218.14 When a child annuity begins.—New	
218.15 When a parent annuity begins.—New	
218.16 When a surviving divorced spouse annuity begins.—New	
218.17 When a remarried widow(er) annuity begins.—New	
Subpart C—How Work and Special Payments Affect An Employee, Spouse, or Divorced Spouse Annuity Beginning Date	
218.25 Introduction	218.15 Introduction.
218.26 Work started after annuity beginning date.	218.16 Work started after annuity beginning date.
218.27 Vacation pay	218.17 Vacation pay.
218.28 Sick pay	218.18 Sick pay.
(a)	(a)
(b)	(b)
218.29 Pay for time lost.	218.19 Pay for time lost.
218.30 Separation, displacement, or termination pay.	218.20 Separation, displacement, or termination pay.

DERIVATION TABLE—Continued

New section and name	Current section and name
(a)	218.20 1st paragraph.
(b)	(b)
(c)	(c)
Subpart D—When an Annuity Ends	
218.35 When an employee age annuity ends.	218.25 Employee age annuity.
(a)	218.25
(b) New	
218.36 When an employee disability annuity ends.	218.26 Employee disability annuity.
218.37 When a supplemental annuity ends.	218.27 Supplemental annuity.
218.38 When a spouse annuity ends—New.	218.28 Spouse annuity. [Reserved]
218.39 When a divorced spouse annuity ends.—New	
218.40 When a widow(er) annuity ends.—New.	218.29 Surviving spouse annuity. [Reserved]
218.41 When a child annuity ends.—New.	218.30 Child's annuity [Reserved]
218.42 When a parent annuity ends.	218.31 Parent's annuity.
(a) New	
(b)	218.31 Except parenthetical statement at end of (c).
218.43 When a surviving divorced spouse annuity ends.—New	
218.44 When a remarried widow(er) annuity ends.—New	

DISTRIBUTION TABLE

Current section and name	New section and name
218.1 Introduction—except second sentence.	218.1 Introduction.
218.2 Definitions—except words following "Claimant".	218.2 Definitions.
218.5 General Rules—except paragraph (a).	218.5 General Rules.
218.6 When a supplemental annuity begins.	218.10 When a supplemental annuity begins.
218.7 How to choose an annuity beginning date.	218.6 How to choose an annuity beginning date.
(a)	(a)
(b) except words "claimant" and "preparing".	(b)
218.8 When chosen annuity beginning date is more than three months after filing date.	218.7 When chosen annuity beginning date is more than three months after filing date.
218.9 When an applicant can change the annuity beginning date.	218.8 When an individual can change the annuity beginning date.

DISTRIBUTION TABLE—Continued

Current section and name	New section and name
(a) Before an annuity is awarded.—except word "applicant" in introductory sentence.	(a) Before annuity is awarded.
(1)—except word "applicant".	(1)
(2)	(2)
(b) After annuity is awarded—introductory sentence words "if annuity has been awarded", and second sentence except words "However", and "as described in § 216.5(a)(2) of this chapter" and "as described in § 216.20(c)(l) of this chapter".	(b) After annuity is awarded. (1) (2)
218.15 Introduction	218.25 Introduction.
218.16 Work started after annuity beginning date.	218.26 Work started after annuity beginning date.
(a) General.	(a) General.
(b) Intent to retire.	(b) Intent to retire.
(1)	(1)
(2) —except word "or" following "railroad" in paragraph (i).	(2)
218.17 Vacation pay	218.27 Vacation pay.
218.18 Sick pay	218.28 Sick pay.
218.19 Pay for time lost.	218.29 Pay for time lost.
218.20 Separation, displacement, or termination pay.	218.30 Separation, displacement, or termination pay.
—Introductory paragraph except words "as follows:"	(a) General.
(a) Separation allowance.	(b) Separation allowance.
(b) Monthly compensation payments.	(c) Monthly compensation payments.
218.25 Employee age annuity.	218.35 When an employee age annuity ends.
	(a) Entire annuity.
218.26 Employee disability annuity.	218.36 When an employee disability annuity ends.
(a) Ending date	(a) Ending date.
(1)	(1)
(2) except word "becomes".	(3)
(3)	(2)
(b) Effect of ended disability annuity on eligibility for a later annuity—except word "becomes" in second sentence.	(b) Effect of ended disability annuity on eligibility for a later annuity.
218.27 Supplemental annuity.	218.37 When a supplemental annuity ends.
(a)—plus introductory paragraph except words "with earliest of"	
(b)	Obsolete.
218.28 Spouse Annuity [Reserved].	218.38 When a spouse annuity ends.
218.29 Surviving spouse annuity. [Reserved].	218.39 When a widow(er) annuity ends.

DISTRIBUTION TABLE—Continued

Current section and name	New section and name
218.30 Child's annuity. [Reserved].	218.40 When a child annuity ends.
218.31 Parent's annuity—Introductory.	218.31 When a parent annuity ends. Obsolete.
(a)	(a)(1) and (b)(1).
(b)	(b)(2).
(c)	(b)(3).
218.35 When an employee windfall benefit begins. [Reserved].	Unnecessary.
218.36 When an employee windfall benefit ends. [Reserved].	218.35 When an employee age annuity ends. (b) Vested dual benefit based on disability.
218.37 When a spouse windfall benefit begins. [Reserved].	Unnecessary.
218.38 When a spouse windfall benefit ends. [Reserved].	Unnecessary.
218.39 When a surviving spouse windfall benefit begins. [Reserved].	Unnecessary.
218.40 When a surviving spouse windfall benefit ends. [Reserved].	Unnecessary.

List of Subjects in 20 CFR Part 218

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Chapter II of Title 20 of the *Code of Federal Regulations* is amended as follows:

1. Part 218, Annuity Beginning and Ending dates, is revised to read as follows:

PART 218—ANNUITY BEGINNING AND ENDING DATES

Subpart A—General

Sec.
218.1 Introduction.
218.2 Definitions.
218.3 When an employee disappears.

Subpart B—When an Annuity Begins

218.5 General rules.
218.6 How to choose an annuity beginning date.
218.7 When chosen annuity beginning date is more than three months after filing date.
218.8 When an individual may change the annuity beginning date.
218.9 When an employee annuity begins.
218.10 When a supplemental annuity begins.
218.11 When a spouse annuity begins.
218.12 When a divorced spouse annuity begins.
218.13 When a widow(er) annuity begins.
218.14 When a child annuity begins.
218.15 When a parent annuity begins.
218.16 When a surviving divorced spouse annuity begins.
218.17 When a remarried widow(er) annuity begins.

Subpart C—How Work and Special Payments Affect an Employee, Spouse, or Divorced Spouse Annuity Beginning Date

218.25 Introduction.
218.26 Work started after annuity beginning date.
218.27 Vacation pay.
218.28 Sick pay.
218.29 Pay for time lost.
218.30 Separation, or displacement, or dismissal allowance.

Subpart D—When an Annuity Ends

218.35 When an employee age annuity ends.
218.36 When an employee disability annuity ends.
218.37 When a supplemental annuity ends.
218.38 When a spouse annuity ends.
218.39 When a divorced spouse annuity ends.
218.40 When a widow(er) annuity ends.
218.41 When a child annuity ends.
218.42 When a parent annuity ends.
218.43 When a surviving divorced spouse annuity ends.
218.44 When a remarried widow(er) annuity ends.

Authority: 45 U.S.C. 231f(b)(5).

Subpart A—General

§ 218.1 Introduction.

This part tells when a person's entitlement to a monthly railroad retirement annuity begins and ends. Ordinarily, an annuity begins on the earliest date permitted under the Railroad Retirement Act (Act). This part also tells when and how a person may select a later beginning date. Included is an explanation of how work and certain types of special payments affect the beginning date of an employee or spouse annuity.

§ 218.2 Definitions.

As used in this part:

"Applicant" means a person who signs an application for an annuity for himself, herself or for some other person.

"Application" means a form described in Part 217 of this chapter.

"Award" means to process a form to make a payment.

"Claimant" means the person for whom an annuity application is filed.

"Filing date" means the date on which an application or written statement is filed with the Board.

"Tier I benefit" means the benefit calculated using the Social Security formulas and is based upon earnings, both in and outside the railroad industry.

"Tier II benefit" means the benefit calculated under a formula found in the Act and is based only upon railroad earnings.

§ 218.3 When an employee disappears.

(a) *General.* If an employee who is entitled to an annuity disappears, the employee annuity ends on the last day of the month before the month of the disappearance.

(b) *Employee has a current connection.* (1) The Board may pay survivor benefits from the month of the employee's disappearance if both of the following conditions are met at the time of the disappearance:

(i) The employee has a current connection with the railroad industry as defined in Part 216 of this chapter, and

(ii) The employee's spouse is entitled, or would have been entitled if he or she had filed an application, to a spouse annuity in the month that the employee disappeared.

(2) If the employee is later found to have been alive during any month for which a survivor annuity was paid, the amount of any incorrect payment must be recovered under the rules of Part 255, Erroneous Payments, of this chapter. The incorrect payment is the amount of any survivor benefits which were paid minus any spouse benefits which were paid minus any spouse benefits that would have been paid.

(c) *Employee has no current connection.* If the employee does not have a current connection and the employee's spouse is entitled to an annuity in the month of the employee's disappearance, the spouse annuity will continue to be paid until one of the following events occurs:

(1) The employee's death is established.

(2) The spouse annuity ends for another reason.

Subpart B—When an Annuity Begins

§ 218.5 General rules.

(a) An annuity begins either on the earliest date permitted by law, or on a specific date chosen by the applicant. If the applicant chooses a specific date, that date must not be before the earliest date permitted by law.

(b) An annuity may not begin on the thirty-first day of a month, unless the claimant would lose benefits if the annuity begins on the first day of the following month. No annuity is payable for the thirty-first day of any month.

§ 218.6 How to choose an annuity beginning date.

(a) *When application is filed.* The applicant may choose an annuity beginning date by—

(1) Naming the month, day and year in an application accepted by the Board; or

(2) Including with the application a signed statement which tells the date (month, day and year) when the annuity should begin.

(b) *After application is filed.* After an application is filed, the claimant may choose an annuity beginning date by submitting a signed statement which tells the month, day and year when the annuity should begin.

(Approved by the Office of Management and Budget under Control Nos. 3220–0002, 3220–0030 and 3220–0042)

§ 218.7 When chosen annuity beginning date is more than three months after filing date.

If the applicant for any type of annuity other than a disability annuity, or a spouse annuity based upon the disabled applicant's compensation, chooses an annuity beginning date in a month which is more than three months after the date the application is filed, the Board will deny the application as explained in Part 217 of this chapter. The applicant must file a new application no earlier than three months before the month he or she wants the annuity to begin.

(Approved by the Office of Management and Budget under Control Nos. 3220–0002, 3220–0030 and 3220–0042.)

§ 218.8 When an individual may change the annuity beginning date.

(a) *Before annuity is awarded.* A claimant may change the annuity beginning date if—

(1) The claimant requests the change in a signed statement; and

(2) The statement is received by the Board on or before the date of the claimant's death.

(b) *After annuity is awarded.* An award can be reopened to change the annuity beginning date to a later date if—

(1) The annuitant requests the change in a signed statement;

(2) The statement is received by the Board on or before the date of the annuitant's death;

(3) The annuitant shows that it is to his or her advantage to have a later annuity beginning date; and

(4) All payments made for the period before the later annuity beginning date are recovered by cash refund or setoff.

§ 218.9 When an employee annuity begins.

(a) *Full-age annuity*—employee has completed 10 years but less than 30 years of service. An employee full-age annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer;

(2) The first day of the month in which the claimant attains age 65; or

(3) The first day of the sixth month before the month in which the application is filed.

(b) *Reduced-age annuity*—employee has completed 10 years but less than 30 years of service. An employee reduced-age annuity begins on the later of either the date chosen by the applicant, or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer;

(2) The first day of the first full month in which the claimant is age 62; or

(3) The first day of the month in which the application is filed if the claimant does not have a spouse (or divorced spouse) who would be entitled to a retroactive unreduced spouse (or divorced spouse) annuity. If the claimant has such a spouse (or divorced spouse) the claimant's annuity can begin on the first day of the month in which the spouse (or divorced spouse) annuity begins.

(c) *Disability annuity.* An employee disability annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer;

(2) The first day of the twelfth month before the month in which the application is filed;

(3) The first day of the sixth month after the month of disability onset; or

(4) The first day of the month of disability onset if the claimant was previously entitled to an employee disability annuity which ended within five years of the current disability onset month.

(d) *Annuity based on at least 30 years of service.* An employee annuity based on at least 30 years of service begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(1) The day after the day the claimant last worked for a railroad employer;

(2) The first day of the first full month in which the claimant is age 60 and will accept a reduced annuity;

(3) The first day of the month in which the claimant attains age 62; or

(4) The first day of the sixth month before the month in which the application is filed.

§ 218.10 When a supplemental annuity begins.

An employee supplemental annuity begins on the latest of—

(a) The beginning date of the employee age or disability annuity;

(b) The first day of the month in which the employee meets the age and years of service requirements as shown in Part 216 of this chapter; or

(c) The first day of the twelfth month before the month in which the employee disability annuitant under age 65 gives up the right to return to work as explained in Part 216 of this chapter.

§ 218.11 When a spouse annuity begins.

(a) A spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law*—(1) *General rules.* The earliest date permitted by law is the latest of—

(i) The day after the day the claimant last worked for a railroad employer;

(ii) The beginning date of the employee annuity;

(iii) The first day of the month in which the claimant meets the marriage requirement as shown in Part 216 of this chapter; or

(iv) The first day of the month in which the employee annuitant meets the age requirement to qualify the claimant as shown in Part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant meets the age requirement as shown in Part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

(3) *"Child in care" annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant becomes eligible for a spouse annuity based on having a "child in care" as shown in Part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

(4) *Reduced-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section.

(ii) The first day of the first full month in which the spouse is age 62 if the employee has less than 30 years of service

(iii) The first day of the month in which the spouse is age 60, if the employee has at least 30 years of service;

(iv) The first day of the sixth month before the month in which the application is filed; or

(v) The first day of the month in which the application is filed if beginning the annuity in an earlier month would increase the age reduction factor applied to the annuity.

§ 218.12 When a divorced spouse annuity begins.

(a) A divorced spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law.*— (1) *General rules.* The earliest date permitted by law is the latest of—

(i) The day after the day the claimant last worked for a railroad employer;

(ii) The beginning date of the employee annuity;

(iii) The first day of the first full month in which the employee annuitant is age 62 if the employee has not been granted a period of disability;

(iv) The first day of the month in which the employee annuitant attains age 62 if the employee has been granted a period of disability; or

(v) The first day of the month in which the final decree of divorce is effective.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 65;

(iii) The first day of the twelfth month before the month in which the application is filed if the employee is a disability annuitant or has been granted a period of disability; or

(iv) The first day of the sixth full month before the month in which the application is filed if the employee is not entitled to a disability annuity or a period of disability.

(3) *Reduced-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the first full month the claimant is age 62 if the application is filed in or before that month; or

(iii) The first day of the month in which the application is filed.

§ 218.13 When a widow(er) annuity begins.

(a) A widow(er) annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law.*— (1) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The first day of the month in which the employee dies;

(ii) The first day of the month in which the claimant attains age 65; or

(iii) The first day of the sixth month before the month in which the application is filed.

(2) *Reduced-age annuity.* (i) *Widow(er) age 60 through age 62.* The earliest date permitted by law is the latest of—

(A) The first day of the month in which the employee dies;

(B) The first day of the month in which the claimant attains age 60; or

(C) The first day of the sixth month before the month in which the application is filed.

(ii) *Widow(er) over age 62 but under age 65.* The earliest date permitted by law is the latest of—

(A) The first day of the month in which the employee dies;

(B) The first day of the month in which the claimant attains age 62 and one month; or

(C) The first day of the month in which the application is filed.

(3) *Disability annuity.* The earliest date permitted by law is the latest of—

(i) The first day of the month in which the employee dies;

(ii) The first day of the month in which the claimant attains age 50;

(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(4) *"Child in care" annuity.* The earliest date permitted by law is the latest of—

(i) The first day of the month in which the employee dies;

(ii) The first day of the month in which the claimant becomes eligible for a widow(er) annuity based on having a "child in care" as explained in Part 216 of this chapter; or

(iii) The first day of the sixth month before the month in which the application is filed.

§ 218.14 When a child annuity begins.

(a) A child annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law.*— (1) *General rules.* The earliest date permitted by law is the later of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a child annuity as explained in Part 216 of this chapter.

(2) *Child age annuity.* The earliest date permitted by law is the later of—

(i) The month shown in paragraph (b)(1) of this section; or

(ii) The first day of the sixth month before the month in which the application is filed.

(3) *Child annuity based on full-time school attendance.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the sixth month before the month in which the application is filed;

(iii) The first day of the month in which the claimant is in full-time school attendance at an elementary or secondary educational institution; or

(iv) The first day of the month in which the claimant attains age 18.

(4) *Child disability annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the sixth month before the month in which the application is filed;

(iii) The first day of the month in which the claimant meets the definition of disability as explained in Part 220; or

(iv) The first day of the month in which the claimant attains age 18.

§ 218.15 When a parent annuity begins.

A parent annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law. The earliest date permitted by law is the latest of—

(a) The first day of the month in which the employee dies;

(b) The first day of the month in which the claimant attains age 60; or

(c) The first day of the sixth month before the month in which the application is filed.

§ 218.16 When a surviving divorced spouse annuity begins.

(a) A surviving divorced spouse annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law*— (1) *General rules.* The earliest date permitted by law is the later of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a surviving divorced spouse annuity as shown in Part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 65; or

(iii) The first day of the sixth month before the month in which the application is filed.

(3) *Reduced age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 60; or

(iii) The first day of the month in which the application is filed or the first day of the month preceding the month in which the application is filed if the employee died in that preceding month.

(4) *Disability annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 50;

(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(5) *"Child in Care" annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section; or

(ii) The first day of the sixth month before the month in which the application is filed.

§ 218.17 When a remarried widow(er) annuity begins.

(a) A remarried widow(er) annuity begins on the later of either the date chosen by the applicant or the earliest date permitted by law.

(b) *Earliest date permitted by law—*(1) *General rules.* The earliest date permitted by law is the later of—

(i) The first day of the month in which the employee dies; or

(ii) The first day of the month in which the claimant becomes eligible for a remarried widow(er) annuity as shown in Part 216 of this chapter.

(2) *Full-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 65; or

(iii) The first day of the sixth month before the month in which the application is filed.

(3) *Reduced-age annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 60; or

(iii) The first day of the month in which the application is filed or the first day of the month preceding the month in which the application is filed if the employee died in that preceding month.

(4) *Disability annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section;

(ii) The first day of the month in which the claimant attains age 50;

(iii) The first day of the twelfth month before the month in which the application is filed; or

(iv) The first day of the sixth month after the month of disability onset.

(5) *"Child in care" annuity.* The earliest date permitted by law is the latest of—

(i) The month shown in paragraph (b)(1) of this section; or

(ii) The first day of the sixth month before the month in which the application is filed.

Subpart C—How Work and Special Payments Affect an Employee, Spouse, or Divorced Spouse Annuity Beginning Date

§ 218.25 Introduction.

The rules in this subpart apply only to an employee, spouse, divorced spouse, and supplemental annuity. They do not apply to any type of survivor annuity.

§ 218.26 Work started after annuity beginning date.

(a) *General.* An annuity can begin only after an employee, spouse, or divorced spouse stops any work for a railroad employer. However, if the employee, spouse or divorced spouse starts work after an "intent to retire" is established, that work will have no effect on the annuity beginning date. However, an annuity cannot be paid for any month the employee, spouse or divorced spouse returns to work for a railroad employer.

(b) *Intent to retire—*(1) *Disability annuity.* An "intent to retire" is established to pay a disability annuity when—

(i) The employee files for a disability annuity; or

(ii) The employee gives up all rights to return to work for a railroad employee before starting any new work.

(2) *Age annuity.* An "intent to retire" is established to pay an employee age, spouse or divorced spouse annuity when the employee, spouse or divorced spouse gives up all rights to return to work for a railroad employer before starting any new work.

§ 218.27 Vacation pay.

(a) *From railroad employer.* Vacation pay may be credited to the vacation period due the employee or to the last day of actual work for the railroad employer. If the vacation pay is credited to the vacation period, the annuity can begin no earlier than the day after the vacation period ends. (Part 211 of this chapter discusses how vacation pay is credited as compensation.)

(b) *From non-railroad employer.* Vacation pay will not affect the annuity beginning date.

§ 218.28 Sick pay.

(a) *From railroad employer.* If the employee is carried on the payroll while sick, the annuity can begin no earlier than the day after the last day of sick pay. However, sick pay is not considered compensation and does not affect the annuity beginning date if it is a payment described in § 211.2(c)(6) of these regulations.

(b) *From non-railroad employer.* Sick pay will not affect the annuity beginning date.

§ 218.29 Pay for time lost.

Pay for time lost because of personal injury must be credited to an actual period of time lost. The annuity can begin no earlier than the day after that period ends.

§ 218.30 Separation, displacement or dismissal allowance.

(a) *General.* When an employee receives a separation, displacement or dismissal allowance from a railroad employer, the annuity beginning date depends on whether the payments are a separation allowance as described in paragraph (b) of this section, or monthly compensation payments as described in paragraph (c) of this section. (Part 211 of this chapter discusses how a separation, displacement or dismissal alowance is credited as compensation.)

(b) *Separation allowance.* When an employee accepts a separation allowance, the employee gives up his or her job rights. Regardless of whether a separation allowance is paid in a lump sum or in installments, the annuity can begin as early as the day after the day the separation allowance is credited.

(c) *Monthly compensation payments.* An employee who receives monthly compensation payments keeps his or her job rights while the payments are being made. The annuity cannot begin until after the end of the period for which payments are made.

Subpart D—When an Annuity Ends

§ 218.35 When an employee age annuity ends.

An employee annuity based on age ends with the last day of the month

before the month in which the employee dies.

§ 218.36 When an employee disability annuity ends.

(a) *Ending date.* An employee annuity based on disability ends with the earliest of—

(1) The last day of the month before the month in which the employee dies;

(2) The last day of the second month following the month in which the employee's disability ends; or

(3) The last day of the month before the month in which the employee attains age 65 (the disability annuity is changed to an age annuity).

(b) *Effect of ended disability annuity on eligibility for a later annuity.* The ending of a disability annuity will not affect an employee's rights to receive any annuity to which he or she later becomes entitled. When a disability annuity ends before an employee attains age 65, any additional railroad service the employee has after the disability annuity ends can be credited as if no annuity had previously been paid.

§ 218.37 When a supplemental annuity ends.

A supplemental annuity ends when the employee age or disability annuity ends.

§ 218.38 When a spouse annuity ends.

(a) *General rules.* A spouse annuity ends with the earliest of—

(1) The last day of the month before the month in which the spouse dies;

(2) The last day of the month before the month in which the employee dies or the employee's entitlement to an annuity ends;

(3) The last day of the month before the month in which the spouse's marriage to the empoyee is ended by absolute divorce, annulment, or other judicial action (the spouse may be entitled to a divorced spouse annuity as explained in Part 216 of this chapter); or

(4) The month shown in paragraphs (b) and (d) of this section.

(b) *Annuity entitlement based on "child in care."* A spouse annuity based on having a "child in care" ends as shown in this paragraph if he or she is not also eligible for a full-age spouse annuity as explained in Part 216 of this chapter. However, see also paragraph (c) of this section. If the spouse is eligible for a full-age spouse annuity when he or she is no longer entitled on the basis of a child, his or her annuity is changed to a spouse annuity based on age. A spouse annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (d) of this section;

(2) The last day of the month before the month in which the child is no longer in the spouse's care, as explained in Part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 18 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

(c) *Tier I benefit entitlement based on "child in care."* The tier I benefit of a spouse entitled because he or she has a "child in care" and is not otherwise entitled to a tier I benefit based on age, ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (d) of this section;

(2) The last day of the month before the month in which the child is no longer in the spouse's care as explained in Part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 16 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 16.

(d) *Entitlement based on deemed marriage.* If the spouse entitlement is based on a deemed valid marriage, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraphs (a) and (b) of this section;

(2) The last day of the month before the month in which the deemed spouse enters a valid marriage with someone other than the employee; or

(3) The last day of the month before the month in which the Board approves an award to someone else as the employee's legal spouse.

§ 218.39 When a divorced spouse annuity ends.

A divorced spouse annuity ends with the earliest of the last day of the month before the month in which the—

(a) Divorced spouse dies;

(b) Employee's entitlement to an annuity ends;

(c) Divorced spouse marries;

(d) Employee dies; or

(e) Divorced spouse becomes entitled to a retirement or disability insurance benefit under the Social Security Act based on a primary insurance amount which equals or exceeds the amount of the full divorced spouse annuity before reduction for age.

§ 218.40 When a widow(er) annuity ends.

(a) *Entitlement based on age.* When a widow(er)'s annuity is based on age, the annuity ends with the earliest of the last day of the month before the month in which—

(1) The widow(er) dies;

(2) The widow(er) remarries (the widow(er) may be entitled to benefits as a remarried widow(er) as explained in Part 216 of this chapter);

(3) The widow(er) becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity; or

(4) The Board approves an award to someone else as the employee's legal widow(er) if entitlement is based on a deemed valid marriage.

(b) *Disabled widow(er).* If entitlement is based on the widow(er)'s disability, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the second month following the month in which the disability ends; or

(3) The last day of the month before the month in which the widow(er) attains age 60 (the disability annuitant then becomes entitled to an annuity based upon age).

(c) *Annuity entitlement based on "child in care."* A widow(er) annuity based on having a "child in care" ends as shown in this paragraph if he or she is not eligible for a widow(er) annuity based on age as explained in Part 216 of this chapter. However, see also paragraph (d) of this section. If the widow(er) is eligible for a widow(er) annuity based on age, when he or she is no longer entitled on the basis of having a "child in care," his or her annuity is changed to a widow(er) annuity based on age. A widow(er) annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the widow(er)'s care as explained in Part 216 of this chapter (in this case entitlement to the annuity does not terminate, but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 18 and is not disabled;

(4) The last day of the month before the month in which the widow(er) attains age 65 (the "child in care" annuity is changed to an age annuity);

(5) The last day of the month before the month in which the child marries;

(6) The last day of the month before the month in which the child dies; or

(7) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

(d) *Tier I benefit entitlement based on child in care.* The tier I benefit of a widow(er), entitled because he or she has a "child in care" and is not otherwise entitled to a tier I benefit based on age, ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the widow(er)'s care as explained in Part 216 of this chapter;

(3) The last day of the month before the month in which the child attains age 16 and is not disabled;

(4) The last day of the month before the month in which the child marries;

(5) The last day of the month before the month in which the child dies; or

(6) The last day of the second month after the month in which the child's disability ends, if the child is over age 16.

§ 218.41 When a child annuity ends.

A child annuity ends with the earliest of—

(a) The last day of the month before the month in which the child marries;

(b) The last day of the month before the month in which the child dies;

(c) The last day of the month before the month in which the child attains age 18 if the child is not eligible for an annuity as a disabled or student child;

(d) The last day of the last month in which the child is considered a full-time student, as defined in Part 216 of this chapter, if the child is a full-time student age 18 through 19; or

(e) The last day of the second month after the month in which the child's disability ends, if the child is over age 18.

§ 218.42 When a parent annuity ends.

(a) *Tier I.* The tier I benefit of a parent annuity ends with the earliest of the last day of the month before the month in which the parent—

(1) Dies;

(2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the tier I benefit of the parent annuity before any reduction for the family maximum, unless he or she is also entitled to a tier II benefit (reduction for the family maximum is discussed in Part 228 of this chapter);

(3) Becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity; or

(4) Remarries after the employee's death, unless he or she marries a person who is entitled to Social Security or Railroad Retirement Act benefits as a divorced spouse, widow, widower, mother, father, parent, or disabled child.

(b) *Tier II.* The tier II benefit of a parent annuity ends with the earliest of the last day of the month before the month in which the parent—

(1) Dies;

(2) Remarries after the employee's death; or

(3) Becomes entitled to another survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

§ 218.43 When a surviving divorced spouse annuity ends.

(a) *Entitlement based on age.* When the surviving divorced spouse annuity is based on age, the annuity ends with the earliest of the last day of the month before the month in which the surviving divorced spouse—

(1) Dies;

(2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the amount of the full surviving divorced spouse annuity before reduction for age; or

(3) Becomes entitled to a spouse or survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

(b) *Entitlement based on disability.* When the surviving divorced spouse annuity is based on disability, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the second month following the month in which the disability ends; or

(3) The last day of the month before the month in which the surviving divorced spouse attains age 65 (the disability annuitant then becomes entitled based upon age).

(c) *Entitlement based on "child in care."* When the surviving divorced spouse annuity is based on having a "child in care" as explained in Part 216 of this chapter, the annuity ends as shown in this paragraph unless he or she is at least age 60 and was married to the employee for at least 10 years. In that case, the surviving divorced spouse annuity based on having a child in care is changed to an annuity based on age. If the surviving divorced spouse is not entitled to an annuity based on age, the surviving divorced spouse annuity based on "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the surviving divorced spouse's care, as explained in Part 216 of this chapter (in this case entitlement to the annuity does not terminate, but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 16, unless the child is disabled;

(4) The last day of the month before the month in which the surviving divorced spouse remarries unless the marriage is to an individual entitled to a retirement, disability, widow(er)'s, father's/mother's, parent's or child's disability benefit under the Railroad Retirement Act or Social Security Act;

(5) The last day of the second month after the month in which the child's disability ends, if the child is over age 16; or

(6) The last day of the month before the month in which the surviving divorced spouse attains age 65 (the annuitant then becomes entitled to an annuity based upon age).

§ 218.44 When a remarried widow(er) annuity ends.

(a) *Entitlement based on age.* When the remarried widow(er) annuity is based on age, the annuity ends with the earliest of the last day of the month before the month in which the remarried widow(er)—

(1) Dies;

(2) Becomes entitled to an old age benefit under the Social Security Act that is equal to or larger than the amount of the full remarried widow(er) annuity before reduction for age or the family maximum (see Part 228 of this chapter); or

(3) Becomes entitled to a spouse or survivor annuity in a larger amount, unless he or she elects to be paid the smaller annuity.

(b) *Entitlement based on disability.* When the remarried widow(er) annuity is based on disability, the annuity ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the second month following the month in which the disability ends; or

(3) The last day of the month before the month in which the remarried widow(er) attains age 65 (the disability annuitant then becomes entitled to an annuity based upon age).

(c) *Entitlement based on "child in care."* When the remarried widow(er) annuity is based on having a "child in care," as explained in Part 216 of this chapter, the annuity ends as shown in this paragraph unless the remarried widow(er) is at least age 60. In that case, the remarried widow(er) annuity based on having a "child in care" is changed to an annuity based on age. If the remarried widow(er) is not entitled to an annuity based on age, the remarried widow(er) annuity based on having a "child in care" ends with the earliest of—

(1) The last day of the month shown in paragraph (a) of this section;

(2) The last day of the month before the month in which the child is no longer in the remarried widow(er)'s care, as explained in Part 216 of this chapter (in this case entitlement to the annuity does not terminate but no annuity is payable while the child is no longer in care);

(3) The last day of the month before the month in which the child attains age 16, unless the child is disabled;

(4) The last day of the month before the month in which the remarried widow(er) remarries unless the marriage is to an individual entitled to a retirement, disability, widow(er)'s, father's/mother's, parent's or child's disability benefit under the Railroad Retirement Act or Social Security Act;

(5) The last day of the second month after the month in which the child's disability ends, if the child is over age 16; or

(6) The last day of the month before the month in which the remarried widow attains age 65 (the annuitant then becomes entitled to an annuity based upon age).

Dated: July 14, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89–17235 Filed 7–21–89; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 88F-0315]

Indirect Food Additives; Adhesives and Components of Coatings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of siloxanes and silicones, dimethyl, 3-hydroxypropyl group-terminated, diesters with poly(2-oxepanone), diacetates as components of articles for use in contact with food. This action is in response to a petition filed by BYK Chemie GmbH.

DATES: Effective July 24, 1989, written objections and requests for a hearing by August 23, 1989.

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

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

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 20, 1988 (53 FR 41241), FDA announced that a food additive petition (FAP 8B4103) had been filed by BYK Chemie GmbH, Abelstrasse 14, D–4230 Wesel, Federal Republic of Germany, proposing that § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) be amended to provide for the safe use of *alpha, omega*-bis(3-hydroxypropyl)dimethylpolysiloxane reaction product with *epsilon*-caprolactone, acetylated as components of articles for use in contact with food.

FDA has evaluated data in the petition and other relevant material and find it would be more appropriate to name the additive "siloxanes and silicones, dimethyl, 3-hydroxypropyl group-terminated, diesters with poly(2-oxepanone), diacetates." Based on its review of the available evidence, the agency concludes that the proposed food additive use is safe. Therefore, the agency is amending paragraph (b)(3)(xxxiii) of § 175.300 to provide for the safe use of the proposed food additive.

In accordance with § 171.1(h) (21 CFR 171.(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before August 23, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

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, Part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 175.300 is amended in paragraph (b)(3)(xxxiii) by

alphabetically adding a new entry to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(xxxiii) * * *

Siloxanes and silicones, dimethyl, 3-hydroxypropyl group-terminated, diesters with poly(2-oxepanone), diacetates (CAS Reg. No. 116810-47-0) at a level not to exceed 0.025 weight percent of the finished coating having no greater than a 0.5 mil thickness for use as a component of polyester, epoxy, and acrylic coatings complying with paragraphs (b)(3)(vii), (viii), and (xx) of this section, respectively.

* * * * *

Dated: July 17, 1989

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-17296 Filed 7-21-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R, Amdt. 23]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Rebasing of Residential Treatment Center (RTC) Rates and Capped Amount

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule will revise DoD 6010.8-R (32 CFR 199) which implements the Civilian Health and Medical Program of the Uniformed Services. The rule establishes the methodology and procedures for rebasing Residential Treatment Center (RTC) rates implemented on December 1, 1988. The new rates will reflect increases in RTC costs attributable to the treatment of more severely disturbed children. The new rates will assure continued high quality care for CHAMPUS beneficiaries.

EFFECTIVE DATE: December 1, 1988.

FOR FURTHER INFORMATION CONTACT David E. Bennett, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045-6900, telephone (303)-361-3537.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. 32 CFR Part 199 (DoD 6010.8-R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

In FR Doc. 89-6934 appearing in the **Federal Register** on March 23, 1989 (54 FR 11966), the Office of the Secretary of Defense published for public comment a proposed amendment establishing the methodology and procedures for rebasing of the prospective all-inclusive RTC rates which went into effect on December 1, 1988.

The new reimbursement system was to go into effect on September 1, 1988; however, on August 10, 1988, a lawsuit was filed in the U.S. District Court for the District of Colorado seeking to enjoin implementation of the new reimbursement system. Pursuant to a court order, OCHAMPUS met with the plaintiffs' attorney and representatives of the National Association of Psychiatric Treatment Centers for Children (NAPTCC) in an attempt to resolve without judicial intervention those conflicts that were still existing over the methodology. In order to accommodate the negotiation process and to avoid preliminary injunction, the effective date of the RTC final rule was first postponed to October 1, 1988 (53 FR 33806 (September 1, 1988)) and later to December 1, 1988 (53 FR 38947 (October 4, 1988)).

Since August of 1988, OCHAMPUS staff and representatives from NAPTCC have engaged in serious discussions in person, by telephone, and by correspondence to resolve those major areas of dispute. Under a stipulation settlement both parties agreed to the following terms:

(1) The terms of the final rule published August 1, 1988, and revised October 4, 1988, shall become effective December 1, 1988.

(2) In going through this current rulemaking the rates determined under the final rule will be applied retroactively, as if the Rule were effective December 1, 1988.

(3) NAPTCC agreed that OCHAMPUS had the legal authority to promulgate the methodology in the August 1, 1988, rule establishing reimbursement for RTCs.

(4) NAPTCC agreed not to challenge OCHAMPUS' legal authority in establishing: (a) An overall cap on RTC per diem reimbursement; (b) a rate high enough to cover one-third of an RTC's total patient days during the base period; (c) an index based on the (CPI-U) for medical care; (d) an all-inclusive rate for RTCs; (e) provisions restricting the status of CHAMPUS authorized independent providers so that they may not directly provide and bill for RTC care; and (f) provisions restricting the delivery of RTC care solely to CHAMPUS authorized RTCs.

(5) OCHAMPUS agreed to review additional data submitted by a cross-section of RTCs in support of "rebasing" the base period used in determining individual RTC reimbursement rates and the overall RTC limit on per diem charges (capped amount).

(6) Upon reaching a settlement both parties agreed to submit a joint motion to the 10th Circuit Court of Appeals requesting that it vacate the District Court's decision in *NAPTCC* v. *Weinberger*.

On November 3, 1988, NAPTCC submitted RTC cost and staffing data collected by the National Association of Private Psychiatric Hospitals (NAPPH). Upon analysis, the data was found to be inadequate to support NAPTCC's contention that the base period used by OCHAMPUS was not appropriate due to subsequent changes in the severity of the RTC patient case mix. The data was insufficient and riddled with inconsistencies. Since neither the accuracy nor consistency of the data could be verified, it was CHAMPUS' decision not to rebase.

On November 22, 1988, OCHAMPUS staff met with representatives of NAPTCC and their attorney to discuss OCHAMPUS' decision that the data provided by NAPTCC was inadequate to support a change in the base period for computation of RTC reimbursement rates. OCHAMPUS officials provided NAPTCC one final opportunity to submit additional data for consideration. NAPTCC agreed to resolve the inconsistencies in the previous data submission and to provide additional reimbursement information on 6 out of 12 OCHAMPUS designated RTCs.

The submitted data was found, in general, to be representative of a substantial portion of the CHAMPUS RTC population and showed significant increases in core professional staff, in salary costs for those personnel, and in operating costs overall. Although a majority of these cost increases could be accounted for in the update factor applied by OCHAMPUS to the original base period data, it was decided to proceed with the rulemaking to "rebase" the RTC individual rates and payment cap.

Terms of the final rule published in the August 1, 1988, **Federal Register** (53 FR 28873) went into effect on December 1, 1988, with the understanding that OCHAMPUS would proceed with the

proposed rulemaking to revise the final rule to establish a methodology and procedures for rebasing individual RTC rates and the overall per diem, all-inclusive, cap. In other words, the RTCs agreed to the rates established under the August 1, 1988, rule with the agency's assurance that their rates would be rebased and applied retroactively to December 1, 1988. OCHAMPUS elected to use the base period of July 1, 1987, through June 30, 1988, since it was: (1) representative of 1988 charging practices; and (2) prior to publication of the RTC final rule (August 1, 1988).

The 10th Circuit Court of Appeals, in an order dated December 16, 1988, remanded the appeal to the District Court with instructions to vacate the judgment appealed. On December 21, 1988, the judgment was vacated by the District Court. On December 14, 1988, the 1988 lawsuit was dismissed with prejudice.

The agency's decision to rebase required the development of a detailed collection instrument in order to obtain the individual RTC data for the revised base period. The data collected from CHAMPUS Form 771 will be used in calculating new prospective all-inclusive per diem rates and capped amount for CHAMPUS authorized RTCs. The capped per diem amount will be set at a specific percentile of all established CHAMPUS rates, weighted by the total CHAMPUS days provided at each rate during the base period (July l, 1987 through June 30, 1988). The data collection form, along with a detailed justification of its use, was coordinated through appropriate Department of Defense (DoD) components and submitted to the Office of Management and Budget (OMB) on March 23, 1989, for review and approval. OMB approval is expected to coincide with publication of this rule.

Review of Comments

As a result of the publication of the proposed rule, the following comments were received from interested RTCs, associations, and agencies.

1. One commentor felt that the proposed changes would directly penalize RTCs whose CHAMPUS rates were below those charged to other third-party payors. The methodology did not provide an opportunity to adjust CHAMPUS reimbursement to a level equitable with other payors.

The prospective reimbursement system permits OCHAMPUS to determine a reasonable market value for RTC services based upon the RTC charges during the revised base period (July 1, 1987 through June 30, 1988), and to limit reimbursement accordingly—to limit each RTC,s reimbursement rate based upon its base period data, and impose a single per diem, per patient cap on all RTCs. The RTC industry has become keenly aware of the CHAMPUS prospective all-inclusive per diem system through extensive litigation. This insight has come about through proposed and final rulemaking, numerous correspondence and meetings with representatives from national associations and individual RTCs. The industry has had more than 4 years to analyze and adjust for our RTC reinbursement system. During the revised base period, RTCs have been allowed to set their own CHAMPUS per diem rates and be reimbursed for unlimited professional fees and other ancillary charges. The failure of an RTC to set its CHAMPUS rate at a level equitable with other payors is solely a management decision and not a result of the methodology or procedures used in rebasing RTC rates.

2. Another commentor felt that since the rebased rates will apply to services provided during 1989, an update factor should be applied to the all-inclusive per diem calculations obtained from the use of the base period of July 1, 1987 through June 30, 1988.

It is the agency's intent to update RTC rates on October 1 of each year using the annual Consumer Price Index—Urban Wage Earners for medical care (CPI–U (medical care)) for the reporting period of July through June. This reporting period is being used due to the 2- to 3-month lag in publication of CPI–U statistics. However, because of the delay in implementation of the prospective reimbursement system and the fact that RTCs cannot recoup for increases in cost-sharing resulting from retroactive adjustments, the agency will update the rebased rates on a one-time basis, for the 5-month period ending November 30, 1988 (July 1, 1988 through November 30, 1988). The rates will be updated again on October 1, 1989, by a prorated CPI–U for the remaining 7 months ending July 1, 1989.

3. One commentor felt that the data collection terminology was misleading and reflected a fundamental misunderstanding of the "charging practices" of RTCs. It was pointed out that payment received/allowed from third-party payors may be significantly different than the amounts charged.

This fact has been recognized and elaborated on in our previous data collection requests. Data element requirements were also discussed with NAPTCC and individual RTCs over the 4 months of negotiation. However, to eliminate any confusion or misunderstanding, we have clarified our data collection requirements in the data collection instrument/form and final rule. The following is an excerpt from the instructional page of the data collection form. "Item 9: For the period July 1, 1987, through June 30, 1988, provide the name, mailing address, and telephone number of *all third-party payors* for whom a rate was established and what the accepted rate was, and the number of patient days actually provided at that rate * * * The accepted rate is the rate that is actually accepted from a third-party payor and not an arbitrary amount billed by the RTC; for example, an RTC has a standard charge of $300/day; however, it gives one of its preferred payors a 20 percent discount ($240/day). The accepted rate for reporting purposes is the $240 amount."

4. One commentor stated that it was impossible to comment on the data collection approach without having an opportunity to review the data collection material and OCHAMPUS' planned methods to analyze the data to set all-inclusive per diem rates.

The methodology and procedures for collection and calculation of the all-inclusive per diem rates and capped amount have appeared in: (1) Previous participation agreements; (2) data collection instructions; (3) correspondence and meetings with NAPTCC, NAPPH, individual professional providers and RTCs; (4) **Federal Register** amendments and notices; and (5) litigation documents and proceedings. The data request for rebasing is essentially the same as that which appeared back in April of 1986, with the exception of the base period. The OMB-approved data collection instrument simply provides a format for arraying the data. This should reduce inconsistency in data submission.

The following data collection issues were discussed with representatives from NAPTCC subsequent to the filing of their lawsuit: (1) Data elements required for rebasing; (2) availability of data requested; (3) time frames for publishing proposed and final rules necessary for rebasing; (4) time frames for receiving OMB approval for the collection form; and (5) frequency of collection. Upon entering into the settlement agreement, NAPTCC was aware of the data collection requirements necessary for rebasing. Through these negotiations, RTCs have become keenly aware of the data collection requirements of our prospective all-inclusive per diem system. Many of them have already collected and computed their rates in anticipation of the settlement agreement.

5. One commentor stated that RTCs with open staff models have no knowledge of the charging practices of, or amounts paid to, these practitioners under CHAMPUS. The commentor questioned how the RTC could determine the professional component amount for an accurate all-inclusive per diem rate.

The data collection instrument will request RTCs to identify all separately billed charges, whether performed by employees and billed directly by the RTC, or performed and billed by independent professional providers. This should include the charged amounts and frequency with which they occurred. The frequency of these services must be based on a random sampling of patient clinical records representing at least 20 percent of total patient days during the base period. Examples of charges to be included are: (1) Individual and group psychotherapy; (2) family therapy (unless specifically exempted as part of the treatment plan); and (3) routine medical management services. Independent professional provider cooperation is anticipated because of their vested interest in the accuracy of this data. If independent professionals are reluctant to share this information with the RTCs, area prevailings may be obtained for each specialty. These prevailings may be used in calculating the professional/ancillary components. However, it is somewhat naive to believe that RTC staff are not privy to professional billing information within their own mental health community.

Upon entering into the settlement agreement, NAPTCC was aware of the data collection requirements for rebasing under the CHAMPUS all-inclusive per diem system. NAPTCC represents over 50 percent of CHAMPUS patient days. Since CHAMPUS RTCs have been operating under the all-inclusive system for the last four and one-half months and have previously submitted the data in question, they should be capable of determining the professional component amount for an accurate all-inclusive per diem rate.

6. Another commentor felt that the participation of an RTC in a demonstration project should not affect its entitlement to rebase its rates as a CHAMPUS participating provider.

The participation of an RTC as a contracted provider in a demonstration project will not affect its entitlement to rebase its rates as a CHAMPUS participating provider. Contracted RTCs will be subject to the same data requirements and reimbursement computations as the other RTCs in the program. The RTCs will be requested to identify all payors for whom a rate was established and accepted, what the rate was, and the number of patient days actually provided at the rate. If the rates did not include all charges, the RTCs will be requested to identify the charges not included.

An RTC rate accepted or contracted for by an RTC in a demonstration area will be included in the base period. For example, during the base period from July 1, 1987, to June 30, 1988, Sentara First Step was providing mental health care in the Virginia tidewater area (Norfolk CPA demonstration) to CHAMPUS beneficiaries. Sentara First Step was a private corporation operating pursuant to a fixed price procurement contract awarded pursuant to the Federal Acquisition Regulation (FAR). Payments accepted by an RTC from Sentara First Step for RTC care will be considered, just like payments from any other third party payor. Sentara First Step was a separate legal entity and was not operating as an agent of the United States. Since April 1, 1989, the Government's contractor for the Norfolk CPA is FHC Options. Payments by FHC Options to RTCs will also be considered when those payments are part of an RTC's base period.

The RTCs will be required to sign a new participation agreement incorporating the rebased rate. However, when an RTC elects to become a contracted provider under the terms of the demonstration, the actual negotiated (demonstration) rate may be different from the rate indicated in the CHAMPUS participation agreement.

Contracted providers under the demonstration project are not subject to the rates and conditions set forth under the new reimbursement system except as a ceiling for beneficiary cost-sharing. However, the CHAMPUS participating rate will be calculated, maintained, and updated for the contracted RTCs in the demonstration area. The rates will be available upon termination of the demonstration project or for care not affected by the demonstration.

7. Another commentor stated that if an RTC is a contract provider under a demonstration project, and negotiates a lower rate than its CHAMPUS participating rate, such lower rate should not be used to subsequently decrease the CHAMPUS participating rates.

The decision to become a contract provider under a CHAMPUS demonstration project and to negotiate a rate lower than the CHAMPUS participation rate is solely an RTC management decision. The decision presumably was based on sound economic/financial considerations. These considerations could include: (1) The facility's actual cost of operation; (2) the facility's desired rate of return (profit margin); and (3) consideration of market share, patient volume and impact on its rate structure. Negotiating a rate with a CHAMPUS demonstration contractor (e.g., Sentara First Step or FHC Options) is no different than providing a discount to private third-party payors or negotiating a rate with local or state agencies. Thus, the negotiated demonstration rate will be used in establishing the CHAMPUS participating rate. The 33⅓ percent (most favored) approach establishes a rate high enough to cover a reasonable portion of an RTC's total business based upon total patient days and charges to all payors. This allows the facility a buffer for artificially set state rates representing an insignificant amount of the provider's business. CHAMPUS has no funds to subsidize lower rates paid by other payors. Nor does CHAMPUS wish to pay higher rates simply because of a more liberal payment policy; that is, paying whatever is charged.

8. One commentor urged OCHAMPUS to calculate a capped per diem rate based upon the use of an 80th percentile figure since it has been consistently used by OCHAMPUS in rate setting for hospitals, physicians and previously proposed RTC payment methodologies.

During the negotiation process with NAPTCC and its legal counsel, OCHAMPUS agreed to review data in support of their contention that the base period used was not appropriate due to subsequent changes in the severity of patient case mix. However, the agency made it clear that even if the decision were to rebase, it would maintain the option of adjusting the percentile used in calculating the capped per diem amount if it was found that one or several of the facilities were skewing the charge data. This was appropriate given the fact that RTCs have had more than 4 years to analyze and adjust to our new prospective payment system. During the revised base period, RTCs have been allowed to set their own CHAMPUS per diem rates and be reimbursed for unlimited professional fees and other ancillary charges. Upon preliminary analysis of internal payment data, it appears that a single RTC chain would have a substantial impact on establishment of the capped amount if set at the 80th percentile. However, this is assuming that the CHAMPUS rate was always the most favored rate and that all professional services were captured in the payment reports. The agency will be unable to make a final decision in this matter until it has had

the opportunity to collect and analyze the requested RTC data from July 1, 1987 through June 30, 1988.

Summary of Regulation Changes

The following procedures and methodology will be used in rebasing individual RTC rates:

1. *RTCs Participating in CHAMPUS During Base Period.* The per diem rate for an RTC participating in CHAMPUS during the base period of July 1, 1987, through June 30, 1988, will be based on the actual charging practices during that 12-month period. The individual RTC rate will be the lower of either the CHAMPUS rate in effect on June 30, 1988, or the rate high enough to cover at least one-third of the total patient days of care provided by the RTC during the 12 months ending July 1, 1988. Under either methodology, the rate will be adjusted by an appropriate CPI–U inflation factor for the 5-month period of July 1, 1988 through November 30, 1988 and subject to a maximum cap.

2. *RTCs New to CHAMPUS After June 30, 1988.* For RTCs new to the CHAMPUS program, one of the following two alternative methods will be used in determining their individual rates:

A. The rates for an RTC which was in operation during the base period (July 1, 1987 through June 30, 1988) will be calculated based on the actual charging practices of the RTC during the 12 months ending July 1, 1988. The individual RTC rate will be the lower of either the CHAMPUS rate in effect on June 30, 1988, or the rate high enough to cover at least one-third of the total patient days of care provided by the RTC during the 12 months ending July 1, 1988. Under either methodology, the rate will be adjusted by an appropriate inflation factor for the 5-month period of July 1, 1988 through November 30, 1988 and subject to a maximum cap.

B. The rates for an RTC which began operation after June 30, 1988, or began operation before July 1, 1988, but had less than 6 months of operation by July 1, 1988, will be based on the actual charging practices during its first 6 to 12 consecutive months, with 6 months being the minimum time in operation for certification under the CHAMPUS program. A period of less than 12 months will be used only when the RTC has been in operation for less than 12 months. Once a full 12 months is available, the rate will be recalculated. The rates would be calculated the same as in A above, except a different base period would be used. If the RTC was in operation prior to December 1, 1988, an appropriate inflation factor would be applied for the period ending November 30, 1988.

3. *Calculation of Capped Per Diem Amount.* During the negotiation process OCHAMPUS made it clear to NAPTCC representatives that the capped percentile might be set lower than the 80th percentile based on evaluation of the new base year data (July 1, 1987 through June 30, 1988). This allows the agency flexibility in determining a reasonable percentile for establishing its maximum daily charge for RTC care. Under the new provision, OCHAMPUS will establish a capped per diem amount not to exceed the 80th percentile of all established CHAMPUS RTC rates nationally, weighted by total CHAMPUS days provided at each rate during the period of July 1, 1987, through June 30, 1988. The percentile used in calculating the capped amount will be based on an analysis of reimbursement information submitted by the RTCs.

Analysis of previous cost and staffing data collected by The National Association of Private Psychiatric Hospitals (NAPPH) indicates that the approximate percent change in cost per patient day for total personnel between the base period (March 1, 1984–February 28, 1985) and fiscal year 1988 was 51 percent. It was NAPTCC's contention that increases in rates were directly attributable to changes in the cost of personnel due to the increased severity of patients treated in RTCs. Since our decision to rebase was made on the above premise, personnel cost increases will weigh heavily in selection of an appropriate percentile for calculating the capped amount.

Although approval of the data collection form is expected to coincide with publication of the final rule, establishment of the percentile used in calculating the capped amount will be delayed. The percentile will be published in the **Federal Register** as soon as the agency has had the opportunity to collect and analyze the requested RTC data from July 1, 1987 through June 30, 1988.

4. *Update Factors.* It is the agency's intent to update RTC rates on October 1 of each year using the annual Consumer Price Index—Urban Wage Earners for medical care (CPI–U (medical care)) for the reporting period of July through June. This reporting period is being used due to the 2-to-3 month lag in publication of CPI–U statistics. However, because of the delay in implementation of the prospective reimbursement system and the fact that RTCs cannot recoup for increases in cost-sharing resulting from retroactive adjustments, the agency will update the rebased rates on a one-time basis, for the 5-month period ending November 30, 1988 (July 1, 1988 through November 30, 1988). The rates will be updated again on October 1, 1989, for the remaining 7 months ending July 1, 1989.

5. *Data Collection Instrument.* The data collection form, CHAMPUS Form 771, "Reimbursement Information—Psychiatric Residential Treatment Centers Serving Children and Adolescents," is simplistic in design in order to minimize the administrative burden on RTCs. It consists of two major categories of data collection: (1) Institutional per diem rates; and (2) additional ancillary or professional charges not included in the per diem rates. The information should already be maintained by the facility for normal operation. It is anticipated that it should take one person 8 to 10 hours to prepare the data, and an additional 2 to 4 hours if OCHAMPUS should have follow-up inquiries regarding their data submission. The RTCs have been assured that data will be kept in strict confidence and will not be accessible to competitors. The only information accessible to the general public will be the OCHAMPUS all-inclusive rates calculated for each RTC as a result of rebasing.

The agency will be responsible for: (1) Sending out the data collection instrument to all CHAMPUS authorized RTCs; (2) answering all inquiries regarding the data collection; (3) compiling and analyzing the submitted data; (4) following up on missing or incomplete data; (5) calculating the individual prospective all-inclusive per diem rates and capped amount for individual RTCs; and (6) sending out revised RTC participation agreements with the rebased rates. All requested information will be subject to on-site verification by OCHAMPUS or its representative. In accordance with Article 6 of the current CHAMPUS RTC participation agreement, failure to provide all the requested information may result in denial of an application for CHAMPUS certification or termination of a current agreement.

6. *Cost-Sharing Provision.* Dependents of retirees and the U.S. Government will be held harmless for increases in cost-sharing resulting from retroactive increases in RTC per diem rates. This simply means that RTCs will not be able to go back and bill dependents of retirees or the government for increases in cost-sharing resulting from retroactive adjustments. The differential in cost-sharing will be absorbed by the RTCs.

The new rates will: (1) Provide the potential for control over rapidly increasing costs for mental health care

within the Department of Defense; (2) ensure that CHAMPUS beneficiaries are not subject to exaggerated or unjustified costs for RTC care solely because of the CHAMPUS entitlement; (3) provide for a rate of reimbursement for all participating RTCs which reflects a reasonable amount consistent with rates charged by their peers nationally and with reimbursement they are accepting from other third-party payors; and (4) reflect the increases in core professional staff, in salary costs for those personnel, and overall operating costs experienced by RTCs since February of 1985.

Regulatory Flexibility Act

Less than 0.13 percent of CHAMPUS institutional providers and less than 0.04 percent of CHAMPUS individual professional providers will be affected by this amendment. Although several independent professional providers have expressed concerns over the new system and the potential impact on their method of doing business, approximately 98 percent of the currently approved RTCs have indicated that they will continue their participation under the new prospective all-inclusive per diem system. In fact, OCHAMPUS has received a number of requests from new RTCs seeking certification under the program. Since the net impact on both institutional and professional components of RTC care will not be significant, the Secretary certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. It is not, therefore, a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

Accordingly, 32 CFR Part 199, is proposed to be amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.14 is amended by revising paragraphs (f)(1) and (f)(2).

§ 199.14 Provider reimbursement methods.

* * * * *

(f) * * *

(1) The all-inclusive per diem rate for RTCs operating or participating in CHAMPUS during the base period of July 1, 1987, through June 30, 1988, will be the lowest of the following conditions:

(i) The CHAMPUS rate paid to the RTC for all-inclusive services as of June 30, 1988, adjusted by the Consumer Price Index—Urban (CPI–U) for medical care as determined applicable by the Director, OCHAMPUS, or designee; or

(ii) The per diem rate accepted by the RTC from any other agency or organization (public or private) that is high enough to cover one-third of the total patient days during the 12-month period ending June 30, 1988, adjusted by the CPI–U; or

Note: The per diem rate accepted by the RTC from any other agency or organization includes the rates accepted from entities such as Government contractors in CHAMPUS demonstration projects.

(iii) An OCHAMPUS determined capped per diem amount not to exceed the 80th percentile of all established CHAMPUS RTC rates nationally, weighted by total CHAMPUS days provided at each rate during the base period discussed in paragraph (f)(1) of this section.

(2) The all-inclusive per diem rates for RTCs which began operation after June 30, 1988, or began operation before July 1, 1988, but had less than 6 months of operation by June 30, 1988, will be calculated based on the lower of the per diem rate accepted by the RTC that is high enough to cover one-third of the total patient days during its first 6 to 12 consecutive months of operation, or the OCHAMPUS determined capped amount. Rates for RTCs beginning operation prior to July 1, 1988, will be adjusted by an appropriate CPI–U inflation factor for the period ending June 30, 1988. A period of less than 12 months will be used only when the RTC has been in operation for less than 12 months. Once a full 12 months is available, the rate will be recalculated.

* * * * *

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 18, 1989.

[FR Doc. 89–17265 Filed 7–21–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA50

Chapter 1 Program in Local Educational Agencies

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends 34 CFR Part 200 to add Office of Management and Budget (OMB) control numbers to certain sections of the regulations. These sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

EFFECTIVE DATE: These regulations are effective July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Ogura, Chief, Program Policy Branch, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2043), Washington, DC 20202–6132. Telephone: (202) 732–4701.

SUPPLEMENTARY INFORMATION: On May 19, 1989 final regulations implementing Part A of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended, were published as 34 CFR Part 200 (54 FR 21752–21809). The effective date of certain sections of these regulations was delayed until information collection requirements contained in those sections were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB has approved the information collection requirements, and these sections of the regulations will become effective with the other sections of the regulations published on May 19, 1989.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Education of disadvantaged, Elementary and secondary education, Reporting and recordkeeping requirements.

Dated: July 17, 1989.

(Catalog of Federal Domestic Assistance Numbers: 84.010, Chapter 1 Program in Local Education Agencies; 84.012, Chapter 1 Program—State Administration)

Lauro F. Cavazos,

Secretary of Education.

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

PART 200—CHAPTER 1 PROGRAM IN LOCAL EDUCATIONAL AGENCIES

1. The authority citation for Part 200 continues to read as follows:

Authority: 20 U.S.C. 2701–2731, 2821–2838, 2851–2854, 2891–2901, unless otherwise noted.

§§ 200.20, 200.30, 200.36, 200.37, 200.43, and 200.57 [Amended]

2. Sections 200.20, 200.30, 200.36, 200.37, 200.43, and 200.57 are amended by adding "(Approved by the Office of Management and Budget under control number 1810–0504)" following each section.

§§ 200.35, 200.38, 200.80, 200.82, 200.83, 200.84, and 200.87 [Amended]

3. Sections 200.35, 200.38, 200.80, 200.82, 200.83, 200.84, and 200.87 are amended by adding "(Approved by the Office of Management and Budget under control number 1810–0037)" following each section.

§ 200.23 [Amended]

4. Section 200.23 is amended by adding "(Approved by the Office of Management and Budget under control number 1810–0060)" following the section.

[FR Doc. 89–17191 Filed 7–21–89; 8:45 am]

BILLING CODE 4000–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–606; RM–6434]

Radio Broadcasting Services; Eureka, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 288C1 for Channel 288A at Eureka, California, and modifies the Class A permit of Eureka Christian Broadcasting, Inc. for Station KECU(FM), as requested, to specify operation on the higher class channel, thereby providing that community with an additional expanded coverage FM service. See 54 FR 4047, January 27, 1989. Coordinates at the petitioner's specified site for Channel 288C1 at Eureka are 40–43–36 and 123–58–18. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 1, 1989.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–606, adopted June 26, 1989, and released July 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for California, is amended by revising the entry for Eureka, by deleting Channel 288A and adding Channel 288C1.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89–17184 filed 7–21–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–618; RM–6525]

Radio Broadcasting Services; Redwood Falls, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 249C1 to Redwood Falls, Minnesota, and modifies the license for Station KLGR–FM, Channel 249A, to specify operation on Channel 249C1. This action is taken in response to a petition filed by CD Broadcasting Corporation. The coordinates for Channel 249C1 are 44–32–33 and 95–07–57. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–618, adopted June 26, 1989, and released July 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota is amended by removing Channel 249A and adding Channel 249C1 at Redwood Falls.

Federal Communications Commission

Karl Kensinger,

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

[FR Doc. 89–17185 Filed 7–21–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–617; RM–6493]

Radio Broadcasting Services; Walker, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 256C2 to Walker, Minnesota, and modifies the license of Station KLLR–FM, Channel 257A, to specify operation on Channel 256C2. This action is taken in response to a petition filed by Midland Broadcasting Company, licensee of Station KLLR–FM. Canadian concurrence has been obtained for the allotment of Channel 256C2 at Walker. The coordinates for Channel 256C2 are 47–05–37 and 94–34–47. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–617, adopted June 26, 1989, and released July 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230),

1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota is amended by removing Channel 257A and adding Channel 256C2 at Walker.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89–17186 Filed 7–21–89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89–30; RM–6419]

Radio Broadcasting Services; Floresville and Pearsall, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 231C2 for Channel 232A at Floresville, Texas, and modifies the license of Station KWCB(FM) to specify operation on the higher class channel, at the request of Alfonso Bazan Gonzalez, d/b/a Wilson County Broadcasting Company. *See* 54 FR 8220, February 27, 1989. This document also substitutes Channel 281A for Channel 231A at Pearsall, Texas, in order to accomplish the substitution at Floresville. Mexican concurrence has been obtained for the allotments. A site restriction of 27.9 kilometers (17.4 miles) west of Floresville has been requested for Channel 231C2, at coordinates 29–13–34 and 98–25–55. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6350.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–30, adopted June 30, 1989, and released July 18, 1989.The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments, is amended under Texas, by removing Channel 232A and adding Channel 231C2 at Floresville; and removing Channel 231A and adding Channel 281A at Pearsall.

Karl A. Kensinger,

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

[FR Doc. 89–17187 Filed 7–21–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 203, 208, 209, 212, 213, 214, 215, 216, 217, 219, 222, 223, 236, 242, 245, 252, 253, and 271

[Defense Acquisition Circular (DAC) 88–10]

Department of Defense, Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Final rules.

SUMMARY: Defense Acquisition Circular (DAC) 88–10 amends the DoD FAR Supplement (DFARS) with respect to inspections and audits under the Anti-Kickback Act; use of DD Form 1155, Order for Supplies or Services; safety provisions; construction and architect-engineer contracts; use of Standard Form (SF) 44 for aviation fuel and oil; sealed bidding; Small Business Competitiveness Demonstration Program; Davis-Bacon Act; Service Contract Act of 1965; providing facilities—determination and findings; and editorial corrections.

EFFECTIVE DATE: September 20, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o OUSD(A)(M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2 Title 48 of the Code of Federal Regulations.

The October 1, 1988, revision of the CFR is the most recent edition of that title. It reflects amendments to the 1986 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 86–1 through 86–16.

B. Public Comments

DAC 88–10, Items I, II, IV, V, VII, IX, X, and XI

Public comments are not solicited with respect to these revisions since such revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures.

DAC 88–10, Item III

A proposed rule was published in the **Federal Register** on September 27, 1988 (53 FR 37611), and public comments were solicited. Those public comments were considered in the development of this final rule.

DAC 88–10, Item IV

A proposed rule was published in the **Federal Register** on October 21, 1988 (53 FR 41390), and public comments were solicited. Only one comment was received and that comment concurred with the proposed rule.

DAC 88–10, Item VIII

A proposed rule was published in the **Federal Register** on October 3, 1988 (53 FR 38749), and public comments were requested. Only two comments were received, and they were considered in the development of this final rule.

C. Regulatory Flexibility Act

DAC 88–10, Items I, II, IV, V, IX, X, and XI

These final rules do not constitute a significant revision within the meaning of Pub. L. 98–577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DoD FAR Supplement Subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately. Please

cite DAR Case 89–610D in correspondence.

DAC 88–10, Item III

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. because the changes apply to only those small entities who want to contract with the Government to supply hazardous materials (as defined in the latest version of Federal Standard 313). Most small entities affected by the changes will be distributors rather than manufacturers. An Initial Regulatory Flexibility Analysis has not been performed, but comments were invited from small businesses and other interested parties. None were received.

DAC 88–10, Item VI

This final rule does not constitute a significant revision within the meaning of Pub. L. 98–577 as the coverage is simply transferred to the FAR.

DAC 88–10, Item VII

As stated in the joint policy directive (53 FR 52889), the Office of Federal Procurement Policy and the Small Business Administration will prepare the appropriate regulatory flexibility analysis upon completion of the first quarterly review under the program.

DAC 88–10, Item VIII

A full, final regulatory impact and Regulatory Flexibility Analysis was prepared by DOL and a summary was published in the **Federal Register** on April 29, 1983 (48 FR 19541) when DOL published its regulation. DFARS 222.4 is an implementation of the policy and regulation published by DOL. This final rule will not have a significant economic impact on a substantial number of small entities because it merely codifies in the DFARS (48 CFR), for the convenience of contractors and Government contracting personnel, regulations issued by DOL and codified in 29 CFR for which comments were requested and considered. Accordingly, the Regulatory Flexibility Act does not apply to this rule, and comments are not required.

D. Paperwork Reduction Act

DAC 88–10, Items I through VI, VIII, X, and XI

These rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

DAC 88–10, Item VII

The necessary approvals are being obtained by the Office of Federal Procurement Policy and the Small Business Administration.

DAC 88–10, Item IX

The rule does contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq. This rule reduces the burden hours under OMB clearance number 0704–0213 by 243 hours. The clearance request is presently being prepared for OMB approval.

List of Subjects in 48 CFR Parts 203, 208, 209, 212, 213, 214, 215, 216, 217, 219, 222, 223, 236, 242, 245, 252, 253, and 271

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[Defense Acquisition Circular No. 88–10]

July 20, 1989.

Unless otherwise specified, all DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective September 20, 1989.

Defense Acquisition Circular (DAC) 88–10 amends the DoD Federal Acquisition Regulation Supplement (DFARS) 1988 Edition and prescribes procedures to be followed. The following is a summary of the amendments and procedures.

Item I—Inspections and Audits Under the Anti-Kickback Act (Final Rule)

DFARS 203.502–2(h) is added to identify those organizations authorized by the DoD IG to conduct inspections and audits under the Anti-Kickback Act of 1986.

Item II—Use of DD Form 1155, Order for Supplies or Services (Final Rule)

(a) DFARS 208.705–1 and 216.506(c) are added to clarify the availability of the DD Form 1155 for use as a delivery order form.

(b) DFARS 213.505–2(S–70) is revised to remove the implication that when the DD Form 1155, Order for Supplies or Services, is used as a delivery order form or for procurements governed by parts other than Part 213, it is subject to the requirement to include certain clauses referred to in 213.505–2(S–70).

Item III—Safety Provisions (Final Rule)

New coverage is added to DFARS 209.1, 222.1, Part 223, 236.5, and clauses in 252.223 and 252.236, to implement recent regulations on hazardous material issued by the Occupational Safety and Health Administration (OSHA). The changes (a) add safety programs to DFARS 209.104–1 as an example of an element which may be applicable to responsibility determinations; (b) clarify the role of OSHA in relation to the administration and enforcement of OSHA regulations (222.102–2); (c) revise the requirements for submission of the Material Safety Data Sheets required by 29 CFR 1910.1200; (d) clarify coverage and contractual provisions on radioactive materials notification; (e) add coverage on system safety programs required by DoD Instruction 5000.36; and (f) clarify the accident prevention responsibilities of contractors (236.513, 252.236–7019).

Item IV—Construction and Architect–Engineer Contracts (Final Rule)

The DFARS is revised to make an editorial change regarding cost-plus-fixed-fee contracts for architect-engineer (A–E) services, to update the preparation and distribution of performance evaluation reports for construction and A–E contracts, and raise the dollar threshold for inclusion of a liquidated damages clause in construction contracts.

Item V—Use of Standard Form (SF) 44 for Aviation Fuel and Oil (Final Rule)

DFARS 213.505–3 is revised to allow use of SF 44 up to the dollar threshold at FAR 13.000 for aviation fuel and oil purchases. Unless a specific exception is listed, the normal $2,500 limitation for use of SF 44 remains unchanged.

Item VI—Sealed Bidding (Final Rule)

DFARS 214.270 and 215.470 are deleted because the coverage now appears in the FAR.

Item VII—Small Business Competitiveness Demonstration Program (Final Rule)

This DAC provides further changes to the coverage at DFARS 219.10 to revise the listing of Targeted Industry Categories applicable to the Department of Defense by deleting SIC 5172, Petroleum Products NEC, and by adding SIC Code 3761, Guided Missiles and Space Vehicles.

Item VIII—Davis-Bacon Act (Final Rule)

DFARS Subpart 222.4 is added to provide implementing instructions to contracting officers regarding FAR Subpart 22.4, and a minor change is made to 222.101–1(S–74). The new coverage implements Department of Labor labor standards provisions applicable to the Davis-Bacon Act.

Item IX—Revisions to Subpart 222.10, Service Contract Act of 1965, As Amended (Final Rule)

FAC 84–46 issued new FAR coverage with respect to the Service Contract Act (SCA). This DAC contains revisions to DFARS 222.10 to supplement the FAR.

Item X—Providing Facilities—Determination and Findings (Final Rule)

DFARS 245.302–1 is revised to require a determination to be coordinated with the program or project manager. Associated FAR coverage will appear in FAC 84–51.

Item IX—Revisions to Subpart 222.10, Service Contract Act of 1965, As Amended (Final Rule)

FAC 84–46 issued new FAR coverage with respect to the Service Contract Act (SCA). This DAC contains revisions to DFARS 222.10 to supplement the FAR.

Item X—Providing Facilities—Determination and Findings (Final Rule)

DFARS 245.302–1 is revised to require a determination to be coordinated with the program or project manager. Associated FAR coverage will appear in FAC 84–51.

Item XI—Editorial Corrections (Final Rule)

(a) A number of editorial changes have been made to DFARS 208.470, 208.405, 209.305, 213.204, 217.72 and 219.201. These changes are needed to correct erroneous references and to add a reference to Section 844 of Pub. L. 100–456 at DFARS 219.201.

(b) Other changes are made to correct typographical errors.

Adoption of Amendments

Therefore, the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR Parts 203, 208, 209, 212, 213, 214, 215, 216, 217, 219, 222, 223, 236, 242, 245, 252, 253, and 271 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 203.502–2 is added to read as follows:

203.502–2 General.

(h) The DoD Inspector General has designated Special Agents of the following investigative organizations as representatives for conducting inspections and audits under the Anti-Kickback Act of 1986:

(1) U.S. Army Criminal Investigation Command.

(2) Naval Investigative Service.

(3) Air Force Office of Special Investigations.

(4) Defense Criminal Investigative Service.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

208.405–2 [Amended]

3. Section 208.405–2 is amended by changing the title of paragraph (S–70) to read "Oral orders not to exceed small purchase threshold." in lieu of "Oral orders."

208.470–1 [Amended]

4. Section 208.470–1 is amended by substituting in the first and second sentences of the introductory paragraph and in the first sentence of the paragraph following paragraph (c) the word "section" in lieu of the word "subsection" in all three places.

5. Subpart 208.7 is added to read as follows:

Subpart 208.7—Acquisitions From Blind and Other Severely Handicapped

Sec.
208.705 Procedures.
208.705–1 General.

Subpart 208–7—Acquisitions From Blind and Other Severely Handicapped

208.705 Procedures.

208.705–1 General.

Orders placed with the blind and other severely handicapped in accordance with the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) may be issued on the DD Form 1155.

PART 209—CONTRACTOR QUALIFICATION

6. Section 209.104–1 is added to read as follows:

209.104–1 General standards.

(e) Have the necessary safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors.

209.305 [Amended]

7. Section 209.305 is amended by removing in the parenthetical phrase at the end of the sentence the word "Subpart".

PART 212—CONTRACT DELIVERY OR PERFORMANCE

212.204 [Amended]

8. Section 212.204 is amended by changing in paragraph (b) the dollar figure to read "$500,000" in lieu of "$25,000" in both places.

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

213.204 [Amended]

9. Section 213.204 is amended by substituting in the first sentence the words "above the dollar threshold at FAR 13.000" in lieu of the words "over $25,000"; and by substituting at the end of the first sentence of paragraph (b) the words "FAR Part 6" in lieu of the words "Part 206".

10. Section 213.505–2 is amended by revising paragraph (S–70)(1) to read as follows:

213.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

(S–70) * * *

(1) The DD Form 1155, Order for Supplies or Services, is authorized for use in small purchases made pursuant to FAR Part 13 and other simplified purchases made pursuant to FAR Part 13 and this supplement. (For additional restrictions applicable to classified purchases, see 213.507(a)(4).) It is also authorized for use in issuing orders against departmental contracts or from Government agencies outside the Department of Defense (see FAR 8.4, 8.6, 8.7, and 16.5). The DD Form 1155 provides in one document:

* * * * *

213.505–3 [Amended]

11. Section 213.505–3 is amended by substituting in paragraph (b)(1)(i) the words "the small purchase threshold at FAR 13.000" in lieu of the dollar figure "$10,000"; and by substituting in paragraph (b)(1)(ii) the words "the small purchase threshold at FAR 13.000" in lieu of the dollar figure "$25,000".

PART 214—SEALED BIDDING

214.270 [Removed]

12. Section 214.270 is removed.

PART 215—CONTRACTING BY NEGOTIATION

215.470 [Removed]

13. Section 215.470 is removed.

215.811–70 [Amended]

14. Section 215.811–70 is amended by substituting at the end of definition "Contractor" the reference "FAR 31.001" in lieu of the reference "FAR 30.102."

PART 216—TYPES OF CONTRACTS

15. Section 216.506 is added to read as follows:

216.506 Ordering.

(c) Orders placed under indefinite delivery contracts may be issued on the DD Form 1155.

217.7201-1 [Amended]

16. Section 217.7201-1 is amended by substituting in the second and third sentences the reference "Part 227" in lieu of the references "FAR Part 27" and "Part 27".

217.7201-2 [Amended]

17. Section 217.7201-2 is amended by adding in the first sentence of paragraph (b)(2) the word "FAR" before the word "Part"; and by substituting at the end of paragraph (b)(3) the reference "17.4" in lieu of the reference "217.4".

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.201 [Amended]

18. Section 219.201 is amended by adding in the first sentence of paragraph (a) a comma after the reference "Pub. L. 99-661"; by adding between the reference "Pub. L. 100-180" and the word "established" the words "and Section 844 of Pub. L. 100-456"; by changing the fiscal years "1987-89" to read "1987-90"; and by changing the reference at the end of the second sentence to read "32.4" in lieu of "232.4".

19. Section 219.1005 is amended by revising paragraph (b) to read as follows:

219.1005 [Amended]

20. Section 219.1005 is amended by adding in paragraph (b) SIC (6) entitled "Guided missiles and Space Vehicles, SIC Code 3761"; by redesignating in paragraph (b) the existing SIC (6), (7), (8), and (9) as (7), (8), (9), and (10); and by removing the existing SIC (10).

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

222.101-1 [Amended]

21. Section 222.101-1 is amended by substituting in the designation "For the DLA" in paragraph (S-74) the designation "DLA-PPR" in lieu of the designation "DLA-PR".

22. Section 222.102-2 is added to read as follows:

222.102-2 Administration.

(a)(S-70) The U.S. Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act. Contractors or contractor employees who inquire concerning applicability or interpretation of Occupational Safety and Health Administration regulations shall be advised that ruling(s) concerning such matters fall within the jurisdiction of the U.S. Department of Labor, and shall be given the address of the appropriate field office of the Occupational Safety and Health Administration of the U.S. Department of Labor.

23. Subpart 222.4 is revised to read as follows:

Subpart 222.4—Labor Standards for Contracts Involving Construction

Sec.

222.403 Statutory and regulatory requirements.
222.403-4 Department of Labor Regulations.
222.404 Davis-Bacon Act wage determinations.
222.404-2 General requirements.
222.404-3 Procedures for requesting wage determinations.
222.404-11 Wage determination appeal.
222.406 Administration and enforcement.
222.406-1 Policy.
222.406-6 Payrolls and statements.
222.406-8 Investigations.
222.406-9 Withholding from or suspension of contract payments.
222.406-10 Disposition of disputes concerning construction contract labor standards enforcement.
222.406-23 Semiannual enforcement reports.
222.407 Contract clauses.

Subpart 222.4—Labor Standards for Contracts Involving Construction

222.403 Statutory and regulatory requirements.

222.403-4 Department of Labor regulations.

If a question arises relating to the application and interpretation of wage determinations (including the classifications therein), the Department concerned should attempt to resolve it with the appropriate office of the Department of Labor. In any case in which resolution of the question by higher authority within the contracting agency is deemed appropriate, such question shall be submitted via appropriate channels to the Departmental Labor Advisor (see 222.101-1(S-74)).

222.404 Davis-Bacon Act wage determinations.

(S-70) Not later than 1 April of each year, each Department shall furnish the Administrator, Wage and Hour Division, with a general outline of its proposed construction program for the coming fiscal year indicating by individual project the anticipated type of construction, the estimated dollar value, and the location in which the work is to be performed (city, town, village, county or other civil subdivision of the state). Individual projects less than $500,000 need not be reported. The report format is contained in Department of Labor All Agency Memo 144, 27 December 1985. The report control number is 1671-DOL-AN. The Department of Labor uses this information to determine where General Wage Determination surveys will be conducted.

222.404-2 General requirements.

(c)(5) Information concerning the proper application of wage rate schedules to the type or types of construction involved, shall be obtained from the appropriate District Commander, Corps of Engineers, for the Army, from the cognizant Naval Facilities Engineering Command Division for the Navy, from the appropriate Regional Industrial Relations Office for the Air Force, and from the appropriate Defense Logistics Agency Region (ATTN: Industrial Labor Relations Office) for the Defense Logistics Agency.

222.404-3 Procedures for requesting wage determinations.

(b) *Requests for Project Wage Determinations.* Requests for project wage determinations shall be initiated and forwarded to the Department of Labor as follows:

(1) *For the Army:* SF 308 shall be initiated by the office responsible for the preparation of specifications or the awarding of contracts, and shall be forwarded in duplicate to the appropriate District Commander. The original SF 308 shall be sent by the District Commander to the Department of Labor.

(2) *For the Navy:* Within the Naval Facilities Engineering Command, requests shall be initiated by the office responsible for the preparation of specifications. The original SF 308 shall be sent to the Department of Labor with a copy of the cognizant Naval Facilities Engineering Command Division Office. Requests relating to contracts of other commands or offices should be processed through the cognizant Naval Facilities Engineering Command Division Office.

(3) *For the Air Force:* Requests shall be initiated by a civil engineering office in cases where it is responsible for preparing the construction specifications, and by the contracting officer administering the contract in cases of subcontracts and facilities. The original SF 308 shall be submitted to the Department of Labor. One copy of the SF 308 shall be forwarded to the appropriate Air Force Regional

Industrial Relations Office and one copy retained in the requesting office's files.

(4) *Defense Logistics Agency:* Requests shall be initiated by the office responsible for the preparation of specifications or award of contracts. The original SF 308 shall be sent to the Department of Labor with a copy to Headquarters, DLA, ATTN: Industrial Labor Relations (DLA–PRS).

(c) *Time for Submission of Requests.* When due to an emergency, a wage determination is required immediately, the requiring activity shall request assistance from the appropriate office listed under 222.404–3(b).

(e) *Review of Wage Determinations.* The requesting office shall inform the appropriate office indicated in 222.404–3(b) of any changes considered to be necessary or appropriate to correct errors in a wage determination.

222.404–11 Wage determination appeals.

A copy of a petition for review filed by the contracting agency shall be sent to the Departmental Labor Advisor (see 222.101–1 (S–74)).

222.406 Administration and enforcement.

222.406–1 Policy.

(a)(5) Training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities.

(a)(6) Periodic review of field enforcement activities to ensure compliance with applicable regulations and instructions.

(b) *Preconstruction Letters and Conferences.*

(S–70) *Preconstruction Letters.* Promptly after award of the contract, the contracting officer shall furnish to the prime contractor a preconstruction letter calling attention to the labor standards requirements contained in the contract which relate to:

(i) Employment of foremen, laborers, mechanics, and others;

(ii) Wages and fringe benefits payments, payrolls and statements;

(iii) Differentiation between subcontractors and suppliers;

(iv) Additional classifications;

(v) Benefits to be realized by contractors and subcontractors in keeping complete work records;

(vi) Penalties and sanctions for violations of labor standards provisions; and

(vii) The provisions of FAR 22.403 which may be of consequence in contract performance. The letter shall state that the labor standards requirements are based on the following statutes and regulations: Davis-Bacon Act, Contract Work Hours and Safety Standards Act, Copeland ("Anti-Kickback") Act, and Parts 3 and 5 of the Secretary of Labor's Regulations (Parts 3 and 5, Subtitle A, Title 29, Code of Federal Regulations). Executive Order 11246 (Equal Employment Opportunity) also may be covered in this letter. Prime contractors shall also be advised to send a copy of the preconstruction letter to each subcontractor.

(S–71) *Preconstruction Conference.* The contracting officer shall confer with the contractor and such subcontractors as the prime contractor designates to emphasize their labor standards obligations under the contract, when the prime contractor has not performed previous Government construction contracts or has experienced difficulty in complying with labor standards requirements on previous contracts, or when for other reasons the contracting officer considers such action warranted. Such conferences should be held prior to the beginning of construction. During the conference, the contracting officer should determine whether the contractor and his subcontractors intend to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment. If the latter is indicated, the contractor shall be advised of the requirements of FAR 22.406–2.

222.406–6 Payrolls and statements.

(a) *Submission.* Contractors who do not use Department of Labor Form WH 347 of equivalent must submit a DD Form 879, Statement of Compliance, with each payroll report.

222.406–8 Investigations.

(a)(S–70) The investigator shall comply with the following:

(i) The contract shall be checked for inclusion of labor standards provisions and the wage determination. The contract file shall be checked for completeness of the following items, if applicable:

(A) List of subcontractors,

(B) Payrolls and payroll statements for the contractor and subcontractors,

(C) Approvals of additional classifications,

(D) Data regarding apprentices and trainees as required by FAR 22.406–4,

(E) Daily inspector's report or other inspection reports,

(F) Employee interview statements, and

(G) Statement and Acknowledgment, Standard Form 1413.

(ii) Contractors' and subcontractors' weekly payrolls and payroll statements should be checked for completeness and accuracy with respect to the following items:

(A) Identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period;

(B) Inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract;

(C) Computation of daily and weekly hours;

(D) Computation of time-and-one-half for work in excess of 40 hours per week in accordance with FAR 22.406–2(c);

(E) Gross weekly wages;

(F) Deductions;

(G) Computation of net weekly wages paid to each employee;

(H) Ratio of helpers, apprentices and trainees to labors and mechanics;

(I) Apprenticeship and trainee registration and ratios; and

(J) Computation of fringe benefits payments.

(iii) The contractor shall be informed in advance by the investigator that he is investigating compliance with pertinent contract labor standards provisions, and outline the general scope of the investigation, which includes examining pertinent records and interviewing employees. The names of the employees to be interviewed shall not be divulged to the contractor. At this time, the investigator shall verify the exact legal name of the firm, its address, and the names and titles of principal officers. If verification of the investigator's authority is requested, he shall provide an appropriate letter from the contracting officer to the contractor.

(iv) Complaint investigations shall include an interview with the complainant, except when this is impractical. The interview shall cover all aspects of the complaint to ensure that all pertinent information is obtained. Whenever an investigation does not include an interview of the complainant, its omission shall be explained in the investigator's report.

(v) Contractor and subcontractor records such as basic time cards, books, cancelled payroll checks, and fringe benefits payments records shall be compared with submitted payrolls. When discrepancies are found, pertinent excerpts or copies of the records shall be included in the investigation report as provided in paragraph (a)(S–70)(vi) below, together with a statement of the discrepancy and any explanation obtained by the investigator. In cases where wages include contributions or anticipated costs for fringe payments requiring approval of the Secretary of Labor as provided in FAR 22.406–2(a)(3).

the contractor's records shall be examined to ensure that such approval has been obtained and that any requirements specified in the approval have been met.

(vi) The contractor's records shall be transcribed whenever they contain information at variance with payrolls or other submitted documents. The transcriptions shall be made in sufficient detail to permit them to be used to check computations of restitutions and to determine amounts to be withheld from the contractor. Transcriptions shall follow the form used by the contractor. Comments or explanations concerning the transcriptions shall be placed on separate memoranda or in the narrative report.

(vii) The investigator shall interview a sufficient number of employees or former employees, representative of all classifications, to develop information regarding method and amount of payments, deductions, hours worked, and type of work performed. Standard Form 1445, "Labor Standards Interview", shall be used for employee interviews. Employees shall be interviewed during working hours at the job site if the interview can be conducted privately. Former employees or others may be interviewed elsewhere. Interviews shall be arranged to cause the least inconvenience to the employer and the employee. When personal interviews are impractical, information may be obtained by mail. The investigator shall not disclose to the employee any information finding, recommendation, or conclusion relating to the investigation, except to the extent necessary to obtain the required information. An emloyee's statement shall not be divulged to his employer, nor to anyone other than Government representatives working on the case, without the employee's written permission. The investigator shall request the employee to sign his statement, and to initial any changes thereto, and shall indicate his evaluation of the employee's credibility.

(viii) An interview of the foreman serves to provide information concerning the contractor's compliance with the labor standards provisions with respect to the employee under the foreman's supervision, and the correctness of the foreman's classification as a supervisory employee. All the conditions established for conduct of employee interviews, and the recording and use of data obtained, also apply to foreman interviews.

(ix) The investigator shall determine whether the wage determination decision, any modifications thereto, and any additional classifications are posted as required.

(x) Whenever information indicating possible violations has been developed, the investigator shall interview the contractor involved. At the outset of the interview, the contractor shall be advised that the purpose of the interview is only to obtain such data the contractor may desire to present in connection with the investigation, and that the interview does not mean that a violation has been found or that a requirement for corrective action exists. During the interview, the investigator shall not disclose the identity of any individual who filed a complaint, or whom he has interviewed.

(a)(S–71) The investigator's report shall include at least the following:

(i) Basis for the investigation, including the name of the complainant;

(ii) Names and addresses of prime contractors and subcontractors involved, and names and titles of their principal officers;

(iii) Contract number, date, dollar value of prime contract, and date and number of wage determination therein;

(iv) Description of the contract and subcontract work involved;

(v) Summary of the findings with respect to each of the items listed in 222.406–8(a)(S–70);

(vi) Concluding statement concerning:

(A) The types of violations, including the amount of kickbacks under the Copeland Act, underpayments of basic hourly rates and fringe benefits under the Davis-Bacon Act, or underpayments and liquidated damages under the Contract Work Hours and Safety Standards Act;

(B) Whether violations are considered to be willful, or due to the negligence of the contractor or his agent;

(C) The amount of funds withheld from the contractor; and

(D) Other aspects of violations found.

(vii) The exhibition portion of the report, indexed and appropriately tabbed, including copies of the following when applicable:

(A) Complaint letter;

(B) Contract wage determination;

(C) Preconstruction letter and memorandum of preconstruction conference;

(D) Payrolls and statements indicating violations;

(E) Transcripts of pertinent records of the contractor, and approvals of fringe benefits payments;

(F) Employee interview statements;

(G) Foreman interview statements;

(H) Statements of others interviewed, including Government personnel;

(I) Detailed computations showing kickbacks, underpayments, and liquidated damages;

(J) Summary of all payments due to each employee or to a fund plan or program, and liquidated damages; and

(K) Receipts and cancelled checks.

(c)(4) Where a notification to the contractor informs the contractor of his liability for Contract Work Hours and Safety Standards Act (CWHSSA) liquidated damages, the contractor shall be advised that pursuant to 40 U.S.C. 330(c), a contractor has 60 days after such notice in which he may request relief from an assessment of liquidated damages. The contractor's appeal must demonstrate that the CWHSSA violations did not occur, were improperly computed, or occurred inadvertently notwithstanding the exercise of due care. The notification shall be provided the contractor by certified mail.

(d)(1) The contracting officer shall forward, in accordance with (d)(2)(S–70) below, a report in duplicate which shall include at least the following:

(i) Standard Form 1446, "Labor Standards Investigation Summary Sheet";

(ii) His findings;

(iii) Statement as to the disposition of any contractor rebuttal to the findings;

(iv) Statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages;

(v) Statement as to the disposition of funds available;

(vi) Recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction, waiver, or assessment of liquidated damages, whether the contractor should be debarred, and whether the file should be referred for possible criminal prosecution); and

(vii) The exhibit portion of the report which shall include, when applicable:

(A) Investigator's report;

(B) Copy of contractor's written rebuttal or a summary of the oral rebuttal of the contracting officer findings;

(C) Copies of correspondence between the contractor and contracting officer, including a statement of specific violations found, corrective action requested, and contractor's letter of acceptance or rejection;

(D) Evidence of payment by the contractor of restitution or liquidated damages, such as copies of receipts, cancelled checks, or supplemental payrolls; and

(E) Letter from the contractor requesting relief from the liquidated damages provisions of the CWHSSA.

(d)(2)(S–70) Contracting officers shall forward detailed enforcement reports or summary reports through channels as specified in paragraphs (d)(2)(S–70) (A) through (D) below. When the contracting officer concludes that a criminal statute has been violated, he shall forward one extra copy of the report through the channels specified.

(A) *Army Contracts.* The report, together with the recommendation of the Head of the Contracting Activity, shall be forwarded through channels to the Labor Advisor.

(B) *Navy Contracts.* On contracts of the Naval Facilities Engineering Command, the report shall be forwarded through channels to the Commander. On contracts of other contracting activities, the report shall be forwarded through channels to the Office of the Assistant Secretary of the Navy, Attention: CBM–CM.

(C) *Air Force Contracts.* The report shall be forwarded to the appropriate Air Force Regional Industrial Relations Office for review and evaluation. The Air Force Regional Industrial Relations Office shall forward it, with the findings and recommendations, to HQ AFCMD/PDC, Attention: Director, Air Force Industrial Relations, for evaluation and final disposition. Reports involving criminal violations shall be referred to the nearest Office of Special Investigations District Officer for review and disposition.

(D) *Defense Logistics Agency Contracts.* The report shall be forwarded together with the recommendation of the Head of the Contracting Activity to Headquarters, Defense Logistics Agency, Attention: DLA–AP.

222.406–9 Withholding from or suspension of contract payments.

(a)(S–70) When payments due a contractor are not available to satisfy that contractor's liability for Davis-Bacon Act and/or CWHSSA wage underpayments or liquidated damages, the contracting officer shall contact the Departmental Labor Advisor (see listing at 222.101–1(S–74)) if assistance is needed.

(c)(1) *Forwarding Wage Underpayments to the Comptroller General.* The Standard Form 1093 shall be sent to: U.S. General Accounting Office, Claims Group/GGD, Payment Branch, 441 G Street, NW, Washington, DC 20548.

(c)(3) The Department of Labor has given blanket approval to forward withheld funds to the Comptroller General pending completion of an investigation or other administrative proceedings, when disposition of withheld funds remains the final action necessary to close out a contract.

(c)(4) *Liquidated Damages.* Whenever the sum of liquidated damages is $500 or less, and the violations are found to be nonwillful, or inadvertent, and to have occurred notwithstanding the exercise of due care by the contractor or his agent, or the sum is incorrect, the agency head or his designee may waive or adjust such liquidated damages. Whenever the liquidated damages exceed $500, the agency head or his designee may recommend to the Administrator, Wage and Hour Division, that assessed liquidated damages be adjusted because incorrect, or waived because the violation was nonwillful, or inadvertent, and occurred notwithstanding the exercise of due care.

222.406–10 Disposition of disputes concerning construction contract labor standards enforcement.

(d) The contracting officer's findings and the contractor's statement to the Administrator, Wage and Hour Division, shall be forwarded through the Departmental Labor Advisor (see listing at 222.101–1(S–74)).

222.406–13 Semiannual enforcement reports.

The report shall not include information from investigations conducted by the Department of Labor. The report shall contain the following information, as applicable, for construction work subject to the Davis-Bacon Act and the CWHSSA:

(a) Period covered;

(b) Number of prime contracts awarded;

(c) Total dollar amount of prime contracts awarded;

(d) Number of contractors/subcontractors against whom complaints were received;

(e) Number of contractors/subcontractors found in violation;

(f) Amount of wage restitution found due under:

(1) Davis-Bacon Act,

(2) CWHSSA;

(g) Number of employees due wage restitution under:

(1) Davis-Bacon Act,

(2) CWHSSA;

(h) Amount of liquidated damages assessed under the CWHSSA;

(i) Prework activities:

(1) Number of compliance checks performed,

(2) Preconstruction letters sent.

Reports shall be forwarded through the HCA to the Departmental Labor Advisor (see listing at 222.101–1(S–74)) within 15 days following the end of the reporting period.

222.407 Contract clauses.

(S–70) *Contracts With a State or Political Subdivision.* In the case of construction contracts with a State or political subdivision thereof, the contract clauses prescribed in this Subpart shall be inserted therein, but shall be prefaced by the following provision:

> The Contractor agrees to comply with the requirements of the Contract Work Hours and Safety Standards Act and to insert the following clauses in all subcontracts hereunder with private persons or firms.

24. Subpart 222.10 is revised to read as follows:

Subpart 222.10—Service Contract Act of 1965, as Amended

Sec.

222.1003 Applicability.
222.1003–4 Administrative limitations, variations, tolerances, and exemptions.
222.1003–7 Questions concerning applicability of the Act.
222.1008 Procedures for preparing and submitting notice (SF 98/98a).
222.1008–2 Preparation of SF 98a.
222.1008–7 Required time of submission of notice.
222.1014 Delay of Acquisition dates over 60 days.

Subpart 222.10—Service Contract Act of 1965, as Amended

222.1003 Applicability.

222.1003–4 Administrative limitations, variations, tolerances, and exemptions.

(S–70) *Requests for limitations, variations, tolerances, and exemptions.* The contracting officer shall submit in writing requests for exemption from the Act through Departmental channels, as appropriate, to the Labor Advisor (see 222.101–1(S–70)). The Labor Advisor shall effect necessary coordination and submit the request, if endorsed, to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

222.1003–7 Questions Concerning Applicability of the Act.

Contracting officers may contact the Departmental Labor Advisor by telephone for informal advice concerning the applicability of the Act to a specific acquisition. Requests for a formal determination as to the Act's applicability shall be submitted to the

Departmental Labor Advisor in writing through appropriate channels.

222.1008 Procedures for preparing and submitting Notice (SF 98/98a).

222.1008-2 Preparation of SF 98a.

(b)(1) The contracting officer shall secure the assistance of the cognizant customer/technical personnel to ensure maximum use of the Service Contract Act Directory of Occupations (Directory) and incorporation of all service employee classes (Directory and non-Directory) expected to be utilized. When the statement of work job title, for which there is a Directory equivalent, differs form the Directory job title, the contracting officer shall make a written cross-reference either directly on the SF 98a file copy or on an attached sheet to the SF 98a file copy.

(c) The SF 98a shall include classifications and minimum hourly wage rates conformed under any predecessor contract and so noted as such. Where a previously conformed classification is not included in the Directory, the job description shall also be attached to the SF 98a.

222.1008-7 Required time of submission of notice.

(e) Requests for immediate wage determination responses to emergency acquisitions shall be made through the Departmental Labor Advisor (see listing at 222.101-1(S-74)). If the request is justified, the Labor Advisor shall contact cognizant Department of Labor headquarters officials regarding the requirement.

222.1014 Delay of acquisition dates over 60 days.

(S-70) *Requests to determine whether initial wage determination is current (up-date requests).* Up-date requests shall be forwarded in writing directly to the Wage and Hour Division. The up-date request shall state that one or more procurement dates on the original Notice have been delayed more than 60 days and will further list the new procurement dates. A copy of the original Notice and SF 98a shall be attached as enclosures. Contracting officers shall provide the Departmental Labor Advisor an information copy of the up-date request with all enclosures.

PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

25. Section 223.300 is added to read as follows:

223.300 Scope of subpart.

The Department of Defense has granted itself a deviation to FAR 23.3. DoD agencies shall follow policies and procedures set forth in 223.72 rather than the coverage in FAR 23.3.

223.303 [Removed]

26. Section 223.303 is removed.

27. Subpart 223.72 is added to read as follows:

Subpart 223.72—Hazardous Material Identification and Material Safety Data

Sec.
223.7200 Scope of subpart.
223.7201 Definitions.
223.7202 Policy.
223.7203 Contract clause.

Subpart 223.72—Hazardous Material Identification and Material Safety Data

223.7200 Scope of subpart.

This subpart prescribes policies and procedures for acquiring deliverable items, other than ammunition and explosives, that require the furnishing of data involving hazardous material.

223.7201 Definitions.

"Hazardous material" is defined in the latest version of Federal Standard No. 313. (Federal Standards are sold to the public and Federal agencies through: General Services Administration (3FFN), Room 6622, 7th and D Streets, SW., Washington, DC 20407.)

223.7202 Policy.

(a) The Occupational Safety and Health Administration (OSHA) is responsible for issuing and administering regulations that require Government activities to apprise their employees of—

(1) All hazards to which they may be exposed;

(2) Relative symptoms and appropriate emergency treatment; and

(3) Proper conditions and precautions for safe use and exposure.

(b) To accomplish this objective, it is necessary to obtain certain information relative to the hazards which may be introduced into the workplace by the supplies being acquired. Accordingly, the apparently successful offeror is required to submit hazardous materials data whenever the supplies being acquired are identified as hazardous materials. The latest version of Federal Standard No. 313 (Material Safety Data Sheet, Preparation and Submission of) includes criteria for identification of hazardous materials.

(c) Hazardous material data (Material Safety Data Sheets (MSDSs)) are required on the following:

(1) All times in, or ordinarily cataloged under, the Federal Supply Classes listed in Table I of Appendix A of the latest version of Federal Standard No. 313.

(2) Items having hazardous characteristics in the Federal Supply Classes listed in Table II of Appendix A of the latest version of Federal Standard No. 313.

(3) Any other material designated by the technical representative of the contracting activity as potentially hazardous and requiring safety controls. Technical personnel are required to identify items that in their professional opinion will involve exposure of Government personnel to hazardous materials in any manner (e.g., performance of work use, handling, manufacturing, packaging, storage, inspection, disposal, or any other use) after delivery to the Government-designated destination.

(d) The clause at 252.233-7004, Hazardous Material Identification and material Safety Data, requires submission of MSDSs by the apparently successful offeror prior to contract award, unless the offeror certifies that the supplies are not hazardous.

(e) The contracting officer shall provide a copy of MSDSs received from apparently successful offerors to the cognizant safety officer and/or other designated official, in order to facilitate:

(1) Inclusion of relevant data in an agency MSDS information system, if applicable; and

(2) Other control, safety, or information purposes, as applicable.

223.7203 Contract clause.

The contracting officer shall insert the clause at 252.223-7004, Hazardous Material Identification and Material Safety Data, in solicitations and contracts when one or more of the circumstances listed in 223.7202(c) exists.

28. Subpart 223.73 is added to read as follows:

Subpart 223.73—Notice of Radioactive Material

Sec.
223.7300 Requirements.
223.7301 Contract clause.

Subpart 223.73—Notice of Radioactive Material

223.7300 Requirements.

(a) The contract clause at 252.223-7005 requires the contractor to notify the contracting officer prior to delivery of radioactive material.

(b) Upon receipt of the notice, the contracting officer shall notify receiving

activities so that appropriate safeguards can be taken.

(c) The contract clause permits the contracting officer to waive the notification if the contractor certifies that a notification on prior deliveries is still accurate. The contracting officer may waive the notice only after consultation with cognizant technical representatives.

(d) The contracting officer is required to specify in the clause at 252.223-7005 the number of days in advance of delivery that the contractor will provide notification. The determination of the number of days should be done in coordination with the installation/facility radiation protection officer (RPO). The RPO is responsible for insuring the proper license, authorization or permit is obtained prior to receipt of the radioactive material.

223.7301 Contract clause.

The contracting officer shall insert the clause at 252.223-7005, Notice of Radioactive materials, in solicitations and contracts for supplies which are, or which contain: (a) Radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954; or (b) radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram, or the activity per item equals or exceeds 0.01 microcuries. Such supplies include, but are not limited to, aircraft, ammunition, missiles, vehicles, electronic tubes, instrument panel gauges, compasses, and identification markers.

29. Subpart 223.74 is added to read as follows:

Subpart 223.74—System Safety Program

Sec.
223.7401 Scope of subpart.
223.7402 Policy.

Subpart 223.74—System Safety Program

223.7401 Scope of subpart.

This subpart prescribes the policies for implementing the System Safety Program as required by DoD Instruction 5000.36, "System Safety Engineering and Management."

223.7402 Policy.

Identification and control of safety and health hazards to systems, facilities, personnel, or property during the acquisition process are more cost effective than sustaining the consequences of such hazards, or instituting corrective measures after the fact. The primary objective of the Department of Defense System Safety Program required by DoDI 5000.36, therefore, is to provide for safety and health hazard analysis; to correct or control those hazards commensurate with mission requirements; and to facilitate the acquisition of associate personnel protective equipment and safety health training. The system safety effort considers safety and health hazards throughout the entire life cycle of the system, to include operations, maintenance, repair, transportation, and disposal.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

30. Section 236.201 is amended by revising paragraph (a)(1)(S-70); by removing the existing paragraph (a)(1)(S-71); by redesignating the existing paragraph (a)(1)(S-72) as paragraph (a)(1)(S-71); and by revising paragraphs (c)(1) and (c)(2) to read as follows:

236.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.*

(1)(S-70) Place the Contractor Establishment Code (formerly referred to as the DUNS number) from Item B5A of the DD 350 in Block 2 of SF 1420.

* * * * *

(c) *Distribution and use of performance reports.*

(1) Each performance report will be forwarded to the central data base after completing the review. The central data base, set forth below, will retain reports for six years. HQUSACE, CEPR, is responsible for establishing procedures and practices which will assure appropriate distribution and utilization of performance evaluation data within the Defense Department.

(2) The central automated data base containing performance evaluation information on DOD construction contractors is available to all DOD construction activities.

The centralized data base is maintained at: U.S. Army Engineer Division, North Pacific, ATTN: CENPD-CT, P.O. Box 2870, Portland, OR 97208-2870, Telephone: (503) 326-3459/4910.

Computer access to these files can be made available by contacting North Pacific Division to obtain user logon and procedure instructions.

* * * * *

236.206 [Amended]

31. Section 236.206 is amended by changing the dollar figure in the first and second sentences to read "$500,000" in lieu of "$25,000" in both places.

236.272 [Amended]

32. Section 236.272 is amended by adding between the word "construction" and the word "contracts" the words "and architect-engineer".

236.402 [Amended]

33. Section 236.402 is amended by changing the title of paragraph (S-70) to read "Profit or fee for cost-reimbursement type construction contracts" in lieu of "Profit or Fee"; by removing the title of paragraph (S-70)(1); by redesignating the existing paragraphs (S-70)(1)(i) and (S-70)(1)(ii) to paragraphs (S-70) (1) and (2); and by removing the existing paragraph (S-70)(2).

34. Section 236.513 is added to read as follows:

236.513 Accident prevention.

(S-70) When the circumstances arise for using either the Accident Prevention clause or the Alternate I prescribed at FAR 36.513, the contracting officer shall insert the clause at 252.236-7019 or its Alternate I in solicitations and contracts when a contract for services to be performed at Government facilities (see FAR Part 37) is contemplated and technical representatives advise that special precautions are appropriate. The contracting officer should inform OSHA, or other cognizant Federal, state, or local officials, of instances where the contractor has been notified to take immediate action to correct serious or imminent dangers.

236.602-1 [Amended]

35. Section 236.602-1 is amended by removing in the first sentence of paragraph (S-70) the words "For contracts estimated to cost more than $2,500," and by capitalizing the word "criteria".

36. Section 236.604 is revised to read as follows:

236.604 Performance evaluation.

(a) *Preparation of performance reports.*

(1) The SF 1421 shall be filed and utilized in a manner similar to the SF 254, Architect-Engineer and Related Services Questionnaire.

(2) A separate report shall be prepared after completion of the actual construction of the project. Ordinarily, the evaluating official who prepares the after construction report should be the person most familiar with the architect-engineer's performance.

(c) *Distribution and use of performance reports.* Each performance report will be forwarded to the central data base after completing the review.

The central data base is identified in 236.201(c). The procedures in that paragraph also apply to architect-engineer performance reports.

PART 242—CONTRACT ADMINISTRATION

242.7204 [Amended]

37. Section 242.7204 is amended by substituting in paragraph (c) the reference "252.242–7001" in lieu of the reference "252.245–7001".

PART 245—GOVERNMENT PROPERTY

245.302–1 [Amended]

38. Section 245.302–1 is amended by adding paragraph (a)(4) to read: "The Determination and Findings shall be coordinated with the program or project manager."

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.222–7000 and 252.222–7001 [Removed and Reserved]

39. Sections 252.222–7000 and 252.222–7001 are removed and the sections marked "Reserved."

252.223–7000 [Removed and Reserved]

40. Section 252.223–7000 is removed and the section marked "Reserved."

41. Sections 252.223–7004 and 252.223–7005 are added to read as follows:

252.223–7004 Hazardous material identification and material safety data.

As prescribed at 223.7203(a), insert the following clause in solicitations and contracts.

Hazardous Material Identification and Material Safety Data (Jul 1989)

(a) "Hazardous material", as used in this clause, includes the following:

(1) All items in, or ordinarily cataloged under, the Federal Supply Classes listed in Table I of Appendix A of the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract);

(2) Items having hazardous characteristics in the Federal Supply Classes listed in Table II of Appendix A of the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract);

(3) Any other item to be delivered under this contract which will contain hazardous material or expose Government personnel to those materials.

(b) Each Offeror shall certify as follows: The Offeror certifies that the material to be delivered (_____) is (_____) is not a hazardous material as defined in paragraph (a) above.

(c) The apparently successful Offeror agrees to submit prior to award a Material Safety Data Sheet meeting the requirements of 29 CFR 1910.1200 (g) and the latest version of Federal Standard No. 313 in effect on the date of this solicitation for all hazardous material(s) described in paragraph (a) above, unless the Offeror certifies in paragraph (b) above that the material is not hazardous. Data shall be submitted on all items included in the offer, whether or not the apparently successful Offeror is the actual manufacturer of these items. Failure to comply with this requirement shall result in the Offeror's being considered nonresponsible and ineligible for award.

(d) If there is a change in the composition of the item(s) after award or a revision to Federal Standard No. 313 which renders incomplete or inaccurate the data submitted under paragraph (c) of this clause or the certification submitted under paragraph (b) of this clause, the Contractor shall promptly notify the Contracting officer and resubmit the data.

(e) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(f) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, state, and local laws, codes, ordinanaces, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(g) Notwithstanding any other clause in this contract, the Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate, and disclose any data to which this clause is applicable. The purposes of this right are to——

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes(s).

(2) That the Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

252.223–7005 Notice of radioactive materials.

As prescribed at 223.7301, insert the following clause in solicitations and contracts:

Notice of Radioactive Materials (Jul 1989)

(a) The Contractor shall notify the Contracting Officer or designee, in writing (_____) (The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions.) days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 CFR, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcurie(s) per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 0704–0193).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall (1) be submitted in writing; (2) contain a certification that the quantity of activity, characteristics, and composition of the radioactive material has not changed; and (3) cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcurie per gram or activity per item equals or exceeds 0.02 microcuries and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a).

(End of clause)

42. Section 252.236–7019 is added to read as follows:

252.236–7019 Accident prevention.

As prescribed at 236.513, insert the following clause in solicitations and contracts:

Accident Prevention (Jul 1989)

(a) The Contractor shall provide and maintain work environments and procedures which will safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to contractor operations and activities; avoid interruptions of Government operations and delays in project completion dates; and control costs in the performance of the contract.

(b) For these purposes, on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall—

(1) Provide appropriate safety barricades, sign, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910;

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemd sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to equitable adjustment of the contract price or extension of the performance schedule on any stop order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(End of clause)

Alternate I (JUL 1989)

If the contract will involve (a) work of a long duration or hazardous nature, or (b) performance on a Government facility which on the advice of technical representatives involves hazardous materials or operations which might endanger the safety of the public and/or Government personnel or property, add the following paragraph (f) to the basic clause:

(f) Before commencing the work, the Contractor shall—(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and (2) meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

PART 253—FORMS

43. The list of forms following section 253.204-70 is amended by removing between the listing "253.303-70-DD-1547 DD Form 1547: Record of Weighted Guidelines Application" and the listing "253.303-70-DD-1567 DD Form 1567: Labor Standards Interview" the listing "253.303-70-DD-1565 DD Form 1565: Request for Authorization of Additional Classification and Rate".

PART 271—RECOVERY OF NONRECURRING COSTS ON COMMERCIAL SALES OF DEFENSE PRODUCTS AND TECHNOLOGY AND OF ROYALTY FEES FOR USE OF DOD TECHNICAL DATA

271.004 [Redesignated from 217.004]

44. Section "217.004" is redesignated as "271.004".

[FR Doc. 89-17183 Filed 7-21-89; 8:45 am]

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1320

[Ex Parte No. MC-1]

Regulations for Payment of Rates and Charges—Penalty Charges for Nonpayment

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its credit regulations at 49 CFR Part 1320 to require disclosure on the freight bill of penalties for late payment and notice to the shipper of imposition of collection expense charges within 90 days after the expiration of the authorized credit period. This will ensure that a shipper is notified of its liability for penalty or collection charges.

EFFECTIVE DATE: October 22, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Johnson, (202) 275-7939, or Richard Felder, (202) 275-7291. [TDD for hearing impaired: (202) 275-1721.]

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

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

The Commission certifies that the adoption of these amendments to the credit regulations will not have a significant economic impact on a substantial number of small entities. The new rules will not require the filing of reports or recordkeeping by small entities, and will not duplicate, overlap, or conflict with any existing Federal rules.

List of Subjects in 49 CFR Part 1320

Credit, Freight forwarders, Motor carriers, Maritime carriers, Railroads.

Authority: 49 U.S.C. 10321, 10701, 10702, 10741, 10743, and 10744, and 5 U.S.C. 553.

Decided: July 17, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners André, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

For the reasons set forth in the Preamble, Title 49, Chapter X, Part 1320 of the Code of Federal Regulations is amended as follows:

PART 1320—EXTENSION OF CREDIT TO SHIPPERS BY RAIL COMMON CARRIERS, MOTOR COMMON CARRIERS, WATER COMMON CARRIERS, AND HOUSEHOLD GOODS FREIGHT FORWARDERS

1. The authority-citation for 49 CFR Part 1320 continues to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 10321, 10701, 10702, 10741, 10743, and 10744.

§ 1320.2 [Amended]

2. Section 1320.2 is amended by adding a new paragraph (g)(2)(vi) to read as follows:

§ 1320.2 Extension of credit to shippers.

* * * * *

(g)(2) * * *

(vi) shall be applied only after the authorized credit period, and when the carrier has issued a revised freight bill or notice of imposition of collection expense charges for late payment within 90 days after expiration of the authorized credit period.

3. Section 1320.2(g)(2)(v) is amended by removing the period and inserting a semicolon at the end of the paragraph.

§ 1320.3 [Amended]

4. Section 1320.3(c) is revised to read as follows:

§ 1320.3 Presentation of freight bills.

* * * * *

(c) *Bills or accompanying written notices shall state penalties for late payment, credit time limits and service charge and/or collection expense charge and discount terms.* When credit is extended, freight bills or a separate written notice accompanying a freight bill or a group of freight bills presented at one time shall state that "failure timely to pay freight charges may be subject to tariff penalties" (or a statement of similar import). The bills or

other notice shall also state the time by which payment must be made and any applicable service charge and/or collection expense charge and discount terms.

* * * * *

[FR Doc. 89-17261 Filed 7-21-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 81133-9030]

Atlantic Surf Clam and Ocean Quahog Fisheries

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

ACTION: Notice of area opening.

SUMMARY: NOAA issues this notice terminating certain restrictive management measures that were imposed when two areas were reopened to surf clam fishing offshore of Atlantic City, New Jersey, and Ocean City, Maryland, on July 3, 1988, since the criteria for terminating the special management measures have been met. These previously restricted fishing areas are thereby incorporated into the general fishery.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: John G. Terrill, Surf Clam/Ocean Quahog Plan coordinator, 508-281-9252.

SUPPLEMENTARY INFORMATION: Two areas designated as Atlantic City and Ocean City were reopened to surf clam fishing on July 3, 1988 (53 FR 20854) based upon the reopening criteria specified in § 652.23(b)(2). The areas reopened are specified by the following:

Atlantic City Reopened Area—located between 3 and 9½ nautical miles offshore of Atlantic City, New Jersey. (Part of the area was reopened in 1982.)

Latitude	*Longitude*
39°15.5' N.	74°30.0' W.
39°28.5' N.	74°14.15' W.
39°27.2' N.	74°05.7' W.
39°17.62' N.	74°14.3' W.
39°11.6' N.	74°23.5' W.

Area reopened in 1982:

Latitude	*Longitude*
39°12.4' N.	74°22.3' W.
39°29.33' N.	74°22.37' W.
39°18.35' N.	74°13.6' W.
39°17.6' N.	74°14.3' W.

Ocean City Reopened Area—located between 6 and 10 miles offshore of Ocean City, Maryland.

Latitude	*Longitude*
38°17.0' N.	74°57.0' W.
38°20.5' N.	74°51.0' W.
38°19.0' N.	74°48.5' W.
38°12.5' N.	74°51.0' W.

Section 652.23(b)(3) established that "The Secretary will control the harvest of surf clams from reopened areas separated from the management of the general fishery until the catch per unit of effort in the reopened area is comparable to the average catch per unit of effort in the general fishery, at which time the reopened area will become part of the general fishery." From the time the two areas were reopened, vessels were limited to one trip a quarter in each of the two areas. Vessel owners were also required to provide advance notice of their intention to fish in either of these areas in the course of their regular notification of surf clam fishing days. Section 652.23(c) established that adjustment to harvest restrictions in a reopened area will be made by **Federal Register** notice.

Logbook records submitted by surf clam harvesters were analyzed at the conclusion of each quarter since the reopening of the two areas. From these records it was determined that during the first quarter of 1989, the catch per unit of effort in the Ocean City reopened area had declined to 205.9 bushels per hour. The catch per unit of effort in the general fishery for the same time period was 199 bushels per hour and the Regional Director made the determination to remove the effort restrictions for the Ocean City reopened area. The catch per unit of effort for the Atlantic City reopened area for the first quarter was at 241 bushels per hour necessitating the continued imposition of the effort restrictions. A letter was sent to all vessel operators eligible to fish the Mid-Atlantic surf clam fishery informing them of this decision.

Analysis of catch records for the second quarter of 1989 indicated that the catch rate for the Atlantic City reopened area dropped to 201.6 bushels per hour while the general fishery catch rate rose to 212.0 bushels per hour. Given that the catch rates are similar and the criterion for removing restrictions is satisfied, the Regional Director has determined that effort restrictions should be removed and the Atlantic City area should become part of the general fishery. The only remaining closed area is the area designated as Chincoteague which continues to remain closed with no fishing operations allowed.

The effort restrictions of one trip in each reopened area and the notification requirements imposed through the notice published on June 7, 1988 (53 FR 20854) are terminated effective July 2, 1989. After that date, fishing for surf clams in either area will only be subject to the provisions applying to the general surf clam fishery.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 652

Fisheries.

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

Dated: July 18, 1989.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-17213 Filed 7-21-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 140
Monday, July 24, 1989

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

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 52

[FV-89-202]

United States Standards for Grades of Canned Tomatoes

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: In compliance with the requirements for periodic review of existing regulations and in response to a petition from the canned tomato industry, the Agricultural Marketing Service (AMS) reviewed and proposes to revise the United States Standards for Grades of Canned Tomatoes. The proposed rule would: (1) Include the styles of "whole", "sliced", "halves", "wedges", and "diced" for canned and stewed tomatoes; (2) eliminate the "U.S. Grade A Whole" classification; (3) eliminate drained weight as a scoreable factor but retain it as a grade requirement; (4) incorporate "character" as a scoreable quality factor in all styles; (5) redefine tomato flavor; (6) provide for the use of the U.S. Standard No. 8 circular sieve to determine drained weights of "sliced" and "diced" canned tomatoes; (7) change from dual grade nomenclature to single letter grade designations; (8) change the format and make other minor editorial changes consistent with other recently revised U.S. grade standards.

The effect of this proposed rule would be to provide more comprehensive U.S. grade standards which reflect changes in cultivars, harvesting and processing techniques, and consumer trends that have developed since the current standards became effective.

DATES: Comments must be received on or before October 23, 1989.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, P.O Box 96456, Washington, DC 20090-6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Branch Chief during public inspection in the Office of the Branch Chief during regular business hours.

FOR FURTHER INFORMATION CONTACT: Harold A. Machias, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6247.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures, Executive Order 12291, and Departmental Regulation 1512-1 and has been designated as a "nonmajor" rule.

It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Agencies are required to periodically review existing regulations. An objective of the regulatory review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601 et seq.). The proposed changes reflect current marketing practices. The use of these standards is voluntary. A small entity may avoid incurring any economic impact by not employing the standards.

The United States Department of Agriculture (USDA) received a petition in March 1986 from the Indiana Food Processors Association, Incorporated (IFPA), a segment of the canned tomato industry, requesting changes in the United States Standards for Grades of Canned Tomatoes.

The IFPA requested these changes to reflect corresponding horticultural, harvesting, processing, and marketing changes in the canned tomato industy.

IFPA stated that over the last ten years there have been significant changes in the canned tomato industy. Coreless tomato varieties have all but replaced the cored, round tomato varieties in the canned tomato market. New manufacturing techniques and procedures have improved in the quality of canned tomatoes and tomato products. However, the grade standards by which these products are graded have not change.

The USDA reviewed IFPA's request and conducted two informal market surveys during the 1987 and 1988 tomato processing seasons. The USDA solicited comments from the canned tomato industry including all the major canned tomato processing areas in California, Ohio, Indiana, Michigan, and the Southeast.

The market survey conducted in 1987, wherein USDA visited 17 processors around the country indicated that virtually all tomato processors agreed that the current grade standards are outdated and do not address current harvesting, processing, and marketing techniques. As a result, the tomato industry closely examined IFPA's proposed changes.

USDA conducted another market survey in July 1988 and a more general consensus on the recommendations with some exceptions from the canned tomato industry. The USDA has reviewed the recommendations and has proposed the following changes.

The current standards are based only on the style of "whole tomatoes". The canned tomato marketplace contains a wide range of canned and stewed tomatoes of various styles. This proposal would address the additional styles of "sliced", "halves", "wedges", and "diced" and the product "stewed tomatoes" as defined in the Food and Drug Administration (FDA) Standards of Identity for Canned Tomatoes (21 CFR 155.190). Including these styles within the U.S. grade standards for canned tomatoes should promote uniformity in grading and marketing for this product.

Under this proposal, the current grade classification "U.S. Grade A Whole" will be eliminated because "whole" is a specified style rather than a grade. The quality level for the current "U.S. Grade A Whole" standard (which requires at least 95% of the tomatoes are whole or almost whole) is proposed to be included under the grade classification "U.S. Grade A" for whole tomatoes (which requires at least 80% of the tomatoes are whole or almost whole).

This proposal eliminates drained weight as a scoreable factor but retains it as a grade requirement as set out in § 52.5170, Table I. Elimination of drained weight as a scoreable quality factor was proposed by IFPA but is not supported by other segments of the industry. Marketing of canned tomatoes has been based on scoring the drained weights for many years. AMS specifically solicits comments on the desirability of eliminating drained weight as a scoreable factor.

Eliminating drained weight as a scoreable factor would be in line with other U.S. grade standards. However, unlike most other standards, drained weight would be retained as a grade requirement to reflect marketing practices for canned tomatoes. The drained weight requirements would apply to ally styles of canned tomatoes.

This proposal incorporates the quality factor of "character" in the grade standards as a scoreable factor. Many segments of the industry favored the addition of this quality factor since many retail and food service specifications include it as a requirement. Character is the degree of firmness normally found when properly ripened tomatoes have been processed.

Canned or stewed tomatoes containing specified amounts of excessively soft or mushy tomatoes would be classified U.S. Grade B or U.S. Grade C. There is no "Substandard" classification for character for the purposes of these grade standards.

This proposed rule redefines canned tomato flavor as "normal" or "off" flavor. In the current grade standards, flavor is "good", "normal", or "off". It is difficult to distinguish readily between "good" and "normal" flavor. However "normal" flavor is more readily distinguishable from "off" flavor.

This proposal provides for the use of the U.S. Standard No. 8 circular sieve to determine the drained weight averages for "diced" and "sliced" canned tomatoes. The U.S. Standard No. 2 circular sieve is used to determine drained weights for whole style in the current standards. In the proposal, the No. 2 sieve is used for "whole", "halves", and "wedges" styles and the No. 8 sieve is used for "diced" and "sliced" styles. Since the latter two styles expose more internal surface area, more of the placenta (gelatinous internal tissue) may drain through if the No. 2 sieve were used. The use of the No. 8 circular sieve would provide more representative drained weight determinations. Most other processed fruit and vegetable grade standards provide for the use of the U.S. Standard No. 8 circular sieve to determine drained weights.

This proposal replaces dual grade nomenclature with single letter grade designations. Under this proposed rule, "U.S. Grade A (or U.S. Fancy)", "U.S. Grade B (or U.S. Extra Standard)", and "U.S. Grade C (or U.S. Standard)" become "U.S. Grade A", "U.S. Grade B", and "U.S. Grade C" respectively.

Also, this proposal changes the format and makes other minor editorial changes by providing easy-to-read tables and definitions (explaining, where appropriate, some of the textual definitions in the current standards) in a comprehensive format consistent with recently revised U.S. grade standards.

The standards would provide uniform guidelines for efficient marketing of canned tomatoes as authorized by the Agricultural Marketing Act of 1946.

List of Subjects in 7 CFR Part 52

Fruits, Vegetables, Food grades and standards.

For reasons set forth in the preamble, it is proposed that 7 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

The Subpart—United States Standards for Grades of Canned Tomatoes, 7 CFR 52.5161–52.5171 are revised to read as follows:

Subpart—United States Standards for Grades of Canned Tomatoes

Sec.

52.5161 Product description.
52.5162 Styles.
52.5163 Type of pack.
52.5164 Definitions of terms.
52.5165 Fill of container.
52.5166 Minimum drained weight averages.
52.5167 Sample unit sizes.
52.5168 Grades.
52.5169 Factors of quality.
52.5170 Requirements for grades.
52.5171 Determining the grade of a lot.

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended; (7 U.S.C. 1622, 1624).

§ 52.5161 Product description.

The products to which these standards apply are defined in the Standards of Identity issued under the Federal Food, Drug, and Cosmetic Act as:

(a) *Canned tomatoes* (21 CFR 155.190); and

(b) *Canned stewed tomatoes* (21 CFR 155.190).

§ 52.5162 Styles.

(a) *Whole* means tomatoes, peeled or unpeeled, of any size that are substantially whole or almost whole.

(b) *Sliced* means tomatoes, peeled or unpeeled, that have been cut into units of approximately uniform thickness.

(c) *Halves* means tomatoes, peeled or unpeeled, that have been cut into two approximately equal halves.

(d) *Wedges* means tomatoes, peeled or unpeeled, that have been cut into approximate quarters or wedge-shaped sectors.

(e) *Diced* means tomatoes, peeled or unpeeled, that have been cut into approximate cube-shaped units.

§ 52.5163 Type of pack.

Regular pack means tomatoes packed in a medium consisting of tomato juice, tomato puree, or tomato paste.

§ 52.5164 Definitions of terms.

(a) *Character* means the degree of firmness normally found when tomatoes have been processed using good manufacturing practices as defined in 21 CFR Part 110. Canned and stewed tomatoes that, when fully cooked, are *excessively soft or mushy* are considered to lack character. *Excessively soft* is further defined for all styles and means that the unit may disintegrate upon handling, has evidence of sloughing (erosion of the tomato tissue) or has ragged edges, and has lost ability to retain shape. For the purposes of these grade standards, character is classified as good, reasonably good and fairly good. There is no substandard classification for the quality factor of character.

(1) *Good character* in whole, halves, wedges, or sliced tomatoes is defined as tomatoes in which not more than 15 percent by count are excessively soft or mushy. *Good character* in diced tomatoes is defined as diced tomatoes in which not more than 15 percent by weight of the lot average are excessively soft or mushy.

(2) *Reasonably good character* in whole, halves, wedges, or sliced tomatoes is defined as tomatoes in which not more than 25 percent by count are excessively soft or mushy. *Reasonably good character* in diced tomatoes is defined as diced tomatoes in

which not more than 25 percent by weight are excessively soft or mushy.

(3) *Fairly good character* in whole, halves, wedges, or sliced tomatoes is defined as tomatoes in which more than 25 percent by count are excessively soft or mushy. *Fairly good character* in diced tomatoes is defined as diced tomatoes in which more than 25 percent by weight are excessively soft or mushy.

(b) *Color.*

(1) *USDA Tomato Red* means the color of an USDA approved plastic color comparator.

(2) *Minimum Red for Canned Tomatoes* means the equivalent of any of the colors produced by blending the combinations of the following Munsell Color discs of equal diameter when placed as indicated.

Red—Munsell 5 R 2.6/13 (glossy finish)
Yellow—Munsell 2.5 YR 5/12 (glossy finish)
Black—Munsell N 1/ (glossy finish)
Grey—Munsell N 4 (mat finish)

(i) The discs are placed so that one-third of the area of the Red disc, and not more than one third of the area of the Yellow disc, are exposed. The exposed areas of the Black and Gray discs make up the remainder of the area.

(ii) To determine U.S. Grade C Color for canned and stewed tomatoes, apply the test for strength and redness of color outlined in 21 CFR 155.190 (b).

(c) *Defects* refer to objectionable core material, tomato peel, extraneous vegetable material (EVM), blemished areas, and discolored portions that affect the appearance and eating quality of the product as further described below.

(1) *Blemished* areas are abnormal areas on the tomatoes which contrast strongly in color and/or texture with normal tomato tissue. Blemished areas may show objectionable discoloration ranging from light to dark discoloration. Blemished areas include but are not limited to scarred, raised, scabby tissue; darkened, tough areas which remain around the core area; internal or external dark tissue around blossom ends of the tomatoes; or any other areas that are objectionable or unsightly.

(2) *Discolored* portions are imperfections of the tomato tissue which may not be strong contrasting color with respect to the tomato tissue but which detract slightly from the appearance of the product. Examples include sunburned areas, internal browning or tobacco mosaic, cloudy spots or ghost spots.

(3) *Extraneous vegetable material (EVM)* is vegetable material that is not harmful and includes, but is not limited to, whole or parts of stems, calyx bracts, tomato leaves or portions thereof, sprouted seeds, and other similar vegetable material which may not be part of the tomato plant.

(4) *Objectionable core material* is tomato material associated with the core of the tomato which detracts from the appearance or edibility of the product and includes tough fibers and tough or slightly discolored tomato tissue.

(5) *Peel* means the loose or attached skin of the tomato.

(d) *Drained tomatoes* means all of the tomato material that remains on the sieve after draining as prescribed in 21 CFR 155.190.

(e) *Flavor and odor.*

(1) *Normal flavor and odor* means a typical characteristics flavor and odor of mature tomatoes.

(2) *Off-flavor and off-odor* means any flavor or odor other than typical characteristic flavor and odor of mature tomatoes that is objectionable.

(f) *Whole or almost whole,* for whole style only, regardless of size, means that:

(1) The contour of the tomato is not materially affected by coring, trimming, or other means;

(2) The tomato may be cracked or split but not to the extent that there is material loss of seeds or placenta (gelatinous mass filling the seed cavity); and

(3) The tomato units may be restored to their approximate original shape during handling.

§ 52.5165 Fill of container.

The standard of fill of container for canned tomatoes [21 CFR 155.190 (c)] requires that the product occupy not less than 90 percent of the water capacity of the container.

§ 52.5166 Minimum drained weight averages.

(a) The average minimum drained weight requirements for U.S. Grades are listed in Table I in § 52.5170.

(b) The drained weight must not be less than 50 percent of the weight of water required to fill the container.

(c) The minimum drained weight averages are based on equalization of the product 15 days or more after the product has been canned.

(d) The method for ascertaining drained weight for all styles of canned and stewed tomatoes is found in 21 CFR 155.190 except that the U.S. Standard Number 8 circular sieve is used in lieu of a U.S. Standard Number 2 circular sieve for "sliced" and "diced" styles of canned and stewed tomatoes.

(e) *Meeting drained weight averages.* A lot of canned tomatoes is considered as meeting the minimum drained weight averages if the following criteria are met:

(1) The average of the drained weights from all the containers in the sample meets the average drained weight in Table I in § 52.5170.

(2) The drained weights from the individual containers which do not meet the minimum are:

(i) For No. 2½ can size and smaller and for *all styles except diced*: not more than 0.7 ounce lower than the minimum average.

(ii) For *diced* style: not more than 0.5 ounce lower than the minimum average.

(iii) For No. 10 cans, *all styles*: not more than 2.0 ounces below the minimum average; and

(3) The number of containers in the sample which do not meet the requirements of paragraph (f)(2) of this section, does not exceed the acceptance number prescribed for the sample size in 7 CFR 52.38, Table I.

§ 52.5167 Sample unit sizes.

(a) For "whole", "halves", and "wedges" styles, the sample unit size is the amount of product specified to be used for inspection in 7 CFR 52.38, Table I.

(b) For "sliced" and "diced" styles, the sample unit size is the same as indicated in paragraph (a) of this section *EXCEPT* in containers Number 10 (No. 10) can size and larger, an optional sample unit size of 32 ounces per container (drained weight) is permitted.

§ 52.5168 Grades.

(a) *U.S. Grade A* is the quality of canned tomatoes that meets the applicable requirements of Tables I, II, and III of § 52.5170, and scores not less than 90 points.

(b) *U.S. Grade B* is the quality of canned tomatoes that meets the applicable requirements of Tables I, II, and III of § 52.5170, and scores not less than 80 points.

(c) *U.S. Grade C* is the quality of canned tomatoes that meets the applicable requirements of Tables I, II, and III of § 52.5170, and scores not less than 70 points.

(d) *Substandard* is the quality of canned tomatoes that fails the requirements for U.S. Grade C.

§ 52.5169 Factors of quality.

The grade of canned tomatoes is based on the following quality factors:

(a) Drained weight;
(b) Character;
(c) Color;
(d) Wholeness ("whole style" only);
(e) Flavor and odor; and
(f) Defects.

§ 52.5170 Requirements for grades.

TABLE I.—RECOMMENDED MINIMUM DRAINED WEIGHT AVERAGES FOR CANNED TOMATOES AND STEWED TOMATOES ALL GRADES, ALL STYLES

[English (avoirdupois) weights]

Container	Container dimensions [1]	Average drained weight (ounces)	
		U.S. Grade A and B	U.S. Grade C
8 oz. Tall	211 X 304	5.0	4.3
No. 300	300 X 407	8.8	7.6
No. 303	303 X 406	9.8	8.5
No. 2	307 X 409	11.9	10.3
No. 2½	401 X 411	17.3	14.9
No. 10	603 X 700	63.5	54.7

[1] The first figure in this column represents the diameter of the container and the second figure represents the height. The first digit in each number represents inches and the second two digits represent sixteenths of an inch. Thus 307 is three and seven-sixteenths inches.

TABLE II—Maximum Defects Permitted in Each Grade

[All Styles]

	Defect (aggregate area)	In a single container		In total sample representing a lot; in cans of any size [per pound of total contents of all containers (average)]
		In cans of less than 2 pounds total contents (in any container)	In cans of 2 or more pounds total contents (equivalent amount per pound of contents of any container)	
Grade A	Peel	2 square inches	1 square inch	½ square inch.
	Blemished areas	⅛ square inch	1/16 square inch	1/16 square inch
	Discolored portions	½ square inch	¼ square inch	¼ square inch
Grade B	Peel	3 square inches	2 square inches	1.06 square inches.
	Blemished areas	¼ square inch	⅛ square inch	⅛ square inch.
	Discolored portions	1 square inch	½ square inch	½ square inch.
Grade C	Peel	No limit	No limit	1.06 square inches.
	Blemished areas	½ square inch	¼ square inch	¼ square inch.
	Discolored portions	1½ square inches	¾ square inch	¾ square inch.

TABLE III—QUALITY REQUIREMENTS FOR CANNED TOMATOES AND STEWED TOMATOES [1]

[Whole Style]

Factor	Grade A	Grade B	Grade C
Average drained weight	See Table I	See Table I	See Table I.
Character: (by count)	Good character	Reasonably good character	Fairly good character.
Score	18–20 points	16–17 points [2]	14–15 points. [3]
Color: (by surface area)	At least 90% USDA Tomato Red, but not more than 5% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	At least 50% USDA Tomato Red but not more than 10% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	Meets FDA requirements for strength and redness of color [21 CFR 155.190 (b)].
Score	27–30 points	24–26 points [2]	21–23 points. [3]
Wholeness	80% by weight whole or almost whole	70% by weight whole or almost whole	Less than 70% whole or almost whole.
Score	18–20 points	16–17 points [4]	14–15 points. [3]
Flavor	Normal	Normal	Normal.
Defects:			
Core material	Trace	Slight	Moderate.
EVM	Trace	Slight	Moderate.
Peel	See Table II	See Table II	See Table II.
Blemished areas	See Table II	See Table II	See Table II.
Discolored portions	See Table II	See Table II	See Table II.
Score	27–30 points	24–26 points [2]	21–23 points [3]
Total Score	90–100 points	80–89 points	70–79 points.

[1] Stewed tomatoes are graded excluding other vegetable ingredients.
[2] Cannot be graded above U.S. Grade B, regardless of the total score.
[3] Cannot be graded above U.S. Grade C, regardless of the total score.
[4] Can be graded U.S. Grade A, if the total score requirement is met.

TABLE IV—QUALITY REQUIREMENTS FOR CANNED TOMATOES AND STEWED TOMATOES [1]

[Halves and Wedges Styles]

Factor	Grade A	Grade B	Grade C
Average drained weight	See Table I	See Table I	See Table I.
Character: (by count)	Good character	Reasonably good character	Fairly good character.
Score	18–20 points	16–17 points [2]	14–15 points. [3]

TABLE IV—QUALITY REQUIREMENTS FOR CANNED TOMATOES AND STEWED TOMATOES [1]—Continued

[Halves and Wedges Styles]

Factor	Grade A	Grade B	Grade C
Color: (by surface area)	At least 90% USDA Tomato Red, but not more than 5% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	At least 50% USDA Tomato Red but not more than 10% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	Meets FDA requirements for strength and redness of color [21 CFR 155.190 (b)].
Score	27–30 points	24–26 points [2]	21–23 points.[3]
Flavor	Normal	Normal	Normal.
Defects:			
Core material	Trace	Slight	Moderate.
EVM	Trace	Slight	Moderate.
Peel	See Table II.	See Table II.	See Table II.
Blemished areas	See Table II.	See Table II.	See Table II.
Discolored portions	See Table II.	See Table II.	See Table II.
Score	27–30 points	24–26 points [2]	21–23 points.[3]
Total Score [4]	90–100 points	80–89 points	70–79 points.

[1] Stewed tomatoes are graded excluding other vegetable ingredients.
[2] Cannot be graded above U.S. Grade B, regardless of the total score.
[3] Cannot be graded above U.S. Grade C, regardless of the total score.
[4] For "Halves" and "Wedges" styles, the final total score is adjusted by dividing the total score by 80 then multiplying by 100 to allow for the absence of the factor of wholeness.

TABLE V—QUALITY REQUIREMENTS FOR CANNED TOMATOES AND STEWED TOMATOES [1]

[Sliced and Diced Styles]

Factor	Grade A	Grade B	Grade C
Average Drained weight	See Table I.	See Table I.	See Table I.
Character	Good character	Reasonably good character	Fairly good character.
Sliced: by count, Diced: by weight Score.	18–20 points	16–17 points [2]	14–15 points [3].
Color: (by surface area)	At least 90% USDA Tomato Red, but not more than 5% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	At least 50% USDA Tomato Red but not more than 10% less red than Minimum Red for Canned Tomatoes or yellow, and none may be vivid green.	Meets FDA requirements for strength and redness of color [21 CFR 155.190(b)].
Score	27–30 points	24–26 points [2]	21–23 points.[3]
Flavor	Normal	Normal	Normal
Defects:			
Core material	Trace	Slight	Moderate.
EVM	Trace	Slight	Moderate.
Peel	See Table II.	See Table II.	See Table II.
Blemished areas	See Table II.	See Table II.	See Table II.
Discolored portions	See Table II.	See Table II.	See Table II.
Score	27–30 points	24–26 points [2]	21–23 points.[3]
Total Score [4]	90–100 points	80–89 points	70–79 points.

[1] Stewed tomatoes are graded excluding other vegetable ingredients.
[2] Cannot be graded above U.S. Grade B, regardless of the total score.
[3] Cannot be graded above U.S. Grade C, regardless of the total score.
[4] For "Sliced" and "Diced" styles, the final total score is adjusted by dividing the total score by 80 then multiplying by 100 to allow for the absence of the factor of wholeness.

§ 52.5171 Determining the grade of a lot.

The grade of a lot of canned tomatoes covered by these standards is determined by the procedures found in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 52.1 through 52.83).

Dated: July 18, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89–17210 Filed 7–21–89; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 967

[FV–89–061PR]

Expenses and Assessment Rate for Celery Grown in Florida

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 967 for the 1989–90 fiscal year established under the celery marketing order. Funds to administer this program are derived from assessments on handlers. The celery marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable celery handled from the beginning of such year. An annual budget of expenses is prepared by the Florida Celery Committee (Committee) and submitted to the U.S. Department of Agriculture for approval.

DATES: Comments must be received by August 3, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. All

comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 967 [7 CFR Part 967], both as amended, regulating the handling of celery grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven handlers of celery grown in Florida who are subject to regulation under the celery marketing order, and approximately 13 producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of celery handlers and producers may be classified as small entities.

The celery marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable celery handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture for approval. The members of the Committee are handlers and producers of celery. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on May 24, 1989, and unanimously recommended 1989–90 fiscal year expenditures of $131,500, ($127,000 from income and $4,500 from the reserve) and an assessment rate of $0.02 per 60-pound crate of celery shipped. In comparison, 1988–89 fiscal year budgeted expenditures were $126,000, and the asessment rate was $0.02 per 60-pound crate.

Major expenditure categories in the 1989–90 budget include $60,000 for administration, $54,500 for promotion, merchandising, and public relations, $8,800 for travel, and $5,000 for research. Assessment income for 1989–90 is estimated at $120,000, based on a crop of 6,000,000 crates of celery. An additional $7,000 is expected to be received from interest. Additional reserve funds may be used to meet any deficit in assessment income.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 967

Celery, Florida, Marketing agreements and orders.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 967 be amended as follows:

PART 967—[AMENDED]

1. The authority citation for 7 CFR Part 967 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 967.325 is added to read as follows:

§ 967.325 Expenses and assessment rate.

Expenses of $131,500, by the Florida Celery Committee are authorized, and an assessment rate of $0.02 per crate of celery is established for the 1989–90 fiscal year ending July 31, 1990. Unexpended funds from the 1989–90 fiscal year may be carried over as a reserve.

Dated: July 18, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–17208 Filed 7–21–89; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–96–AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which would require a one-time inspection and installation, if necessary, of the power control actuator bushings on the left-hand and right-hand elevators. This proposal is prompted by reports of bushings missing from elevator power control actuator reaction link rod end locations. This condition, if not corrected, could result in unacceptable airframe vibration during flight.

DATES: Comments must be received no later than September 15, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest

Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-96-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION:
Interested pesons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-96-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

During recent elevator free-play checks on a Boeing Model 757 series airplane, an operator found bushings missing from each of the three power control actuators installed on the right elevator. The FAA has not determined whether these bushings were installed during production and subsequently removed, or whether they were not installed during production. Missing bushings, if not detected and corrected, could lead to unacceptable airframe vibration during flight.

The FAA has reviewed and approved Boeing Service Letter 757-SL-27-43, dated May 3, 1989, which describes procedures for inspection of the power control actuator's bushings to determine if the bushings are installed, and replacement, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would required a one-time inspection to determine the presence and proper installation of the power control actuator bushings on the left and right elevator, and installation, if necessary, in accordance with the service letter previously described. In addition, operators would be required to submit a report of their findings to the FAA.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub.L. 96-511) and have been assigned OMB Control Number 2120-0056.

There are approximately 75 Model 757 series airplaines of the affected design in the worldwide fleet. It is estimated that 48 airplanes of U.S. registry would be affected by this AD, that it would take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $57,600.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

PART 39—[AMENDED]

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 757 series airplanes, listed in Boeing Service Letter 757-SL-27-43, dated May 3, 1989, certificated in any category. Compliance required within the next 60 days after the effective date of this AD, unless previously accomplished.

To prevent unacceptable airframe vibration during flight, accomplish the following:

A. Conduct a one-time inspection of the left and right elevator power control actuator to determine the presence of the bushings, in accordance with Boeing Service Letter 757-SL-27-43, dated May 3, 1989. If any bushing is missing, prior to further flight, install new a bushing in accordance with the Boeing Model 757 Maintenance Manual.

B. Within 10 days after the completion of the inspection required by paragraph A., above, submit a report of findings, positive or negative, to the Manager, Manufacturing Inspection Office, ANM-108, FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Reports must include the aircraft serial number.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

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

All persons affected by this directive who have not already received the

appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 17, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-17248 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-99-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require inspection and repair, if necessary, of the nose wheel well sidewalls, top panel, and aft pressure pan. This proposal is prompted by numerous reports of cracking of the nose wheel well box structure. This condition, if not corrected, could result in crack propagation to adjacent structure and, consequently, reduced structural integrity and/or loss of cabin pressurization.

DATES: Comments must be received no later than September 15, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-99-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Moutain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-99-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Several operators of Model 747 series airplanes have reported approximately 70 instances of cracking of the nose wheel well box structure on airplanes having accumulated between 2,400 flight cycles and 19,000 flight cycles. Reports have described various crack locations, including the top panel web and spin brake intercostals, the forward top corner angles, the sidewall vertical beam webs, vertical beam to horizontal stiffener, attach clips and adjacent side panel web, the wheel well floor beam lower chords and webs, the sidewall web at the nose gear trunnion fitting, and the pressure pan at body station (BS) 400. Crack lengths varied according to location, from 1.00 inch at the sidewall horizontal stiffener clips to 11.00 inches at the pressure pan. There have been several reports of the spin brake intercostals, the sidewall panel clips, and the sidewall vertical beam webs found cracked through. In addition, several instances of secondary top panel and side panel cracking have been reported adjacent to these locations. Cracking is attributed to cabin pressure and landing gear cycle loading.

Continued operation with undetected or unrepaired cracking could result in crack propagation to adjacent structure and, consequently, reduced structural integrity below required levels and/or loss of cabin pressurization.

The FAA has reviewed and approved Boeing Service Bulletin 747-53-2293, dated December 1, 1988, which describes the specific inspection procedures to be used to check for cracks in the nose wheel well left and right sidewalls, the nose wheel well top panel, and the aft pressure pan at BS 400; repair procedures; and modification on 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 inspections for cracks and repair, if necessary, in the nose wheel well box structure, in accordance with the service bulletin previously described.

There are approximately 686 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 186 airplanes of U.S. registry would be affected by this AD, that it would take approximately 68 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $505,920.

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

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

List of Subjects in 14 CFR Part 39:

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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.

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

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-53-2293, dated December 1, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent cabin pressure loss due to cracking in the nose wheel well box structure, accomplish the following:

A. Perform the following inspections at the intervals indicated below, in accordance with Boeing Service Bulletin 747-53-2293, dated December 1, 1988. The specified flight cycles (or threshold) applies to the cycles accumulated on the structure within the corresponding inspection areas, and not necessarily to the total number of cycles on the airplane; therefore, inspections may be deferred in any area where structure has been replaced with new structure, until the new structure reaches the appropriate flight cycle threshold.

Note: Flight cycles need not be counted if cabin differential pressure was below 2.0 psi.

1. Prior to the accumulation of 4,000 flight cycles or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,500 flight cycles, conduct a detailed visual internal and external inspection for cracks in the top panel and intercostals.

2. Prior to the accumulation of 10,000 flight cycles or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,500 flight cycles, conduct a detailed visual internal inspection for cracks in the nose wheel well vertical beam clips and sidewall panel web.

3. Prior to the accumulation of 10,000 flight cycles or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,000 flight cycles, conduct a detailed visual internal and external inspection for cracks in the nose wheel vertical beam webs.

B. If cracks are found during any of the inspections required by paragraph A., above, prior to further flight, conduct an inspection for secondary cracking at locations specified in Boeing Service Bulletin 747-53-2293, dated December 1, 1988. Repair all cracks, prior to further flight, by replacing cracked parts with original design parts, or by repairing cracked structure in accordance with Boeing Service Bulletin 747-53-2293, dated December 1, 1988, or the 747 Structural Repair Manual (SRM).

C. An an alternative to the repetitive inspections required by paragraphs A.1. and A.2, above, conduct a detailed visual inspection plus a high frequency eddy current (HFEC) inspection of the nose wheel well top panel and intercostals, nose wheel well vertical beam clips, and sidewall panel web in accordance with Boeing Service Bulletin 747-53-2293, dated December 1,1988, at intervals not to exceed 3,000 flight cycles.

D. As an alternative to the inspection of nose wheel well top panel intercostals, sidewall panel vertical beam clips, and vertical beam webs, required by paragraphs A. and C., above, replace the nose wheel well top panel intercostals, sidewall vertical beam clips, and vertical beam webs with redesigned structure, within the threshold specified in paragraph A., above, and conduct an inspection for cracking of adjacent structure, in accordance with Boeing Service Bulletin 747-53-2293, dated December 1, 1988. Repair any cracks prior to further flight, in accordance with the Boeing service bulletin.

1. For those areas with redesigned structure, perform the inspections required by paragraphs A.1. and A.2., above, at intervals not to exceed 3,000 flight cycles; and perform the inspections required by paragraph A.3., above, at intervals not to exceed 6,000 flight cycles.

2. As an alternative to the inspections required by paragraphs A.1. and A.2, above, for those areas with redesigned structure, conduct a detailed visual inspection plus a HFEC inspection of the nose wheel well top panel intercostals and nose wheel well side panel vertical beam clips, in accordance with Boeing Service Bulletin 747-53-2293, dated December 1, 1988, at intervals not to exceed 6,000 flight cycles.

E. For Model 747SR airplanes, all specified flight limits, allowance periods, and reinspection intervals may be multiplied by a 1.2 adjustment factor, based on mixed operation at lower cabin pressure differentials.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

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

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

Issued in Seattle, Washington, on July 17, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 89-17249 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ASW-27]

Airworthiness Directives; California Department of Forestry et al.

In the matter of Garlick Helicopters; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Lenair Corporation; Pilot Personnel International, Inc.; Smith Helicopters; and Wilco Aviation, Model UH-1 and TH-1 Series Helicopters (these helicopters were manufactured by Bell Helicopter Textron, Inc., under military contract).

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: This document withdraws an NPRM which proposed to adopt an airworthiness directive (AD) to provide a one-time inspection on the tail rotor (T/R) grip assembly used on Model UH-1A, UH-1B, UH-1E, UH-1F, UH-1L, and TH-1L helicopters (modified by California Department of Forestry; Garlick Helicopters; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Lenair Corporation; Pilot Personnel International, Inc.; Smith Helicopters; and Wilco Aviation).

The NPRM is being withdrawn because the FAA has concluded that the requirements of the inspection have either been satisfied or the introduction into service of a new tail rotor grip assembly has eliminated the inspection requirements.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Federal Aviation Administration, Rotorcraft Certification Office, ASW-170, Fort Worth, Texas 76193-0170, telephone (817) 624-5168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring a one-time visual inspection of the T/R grip assembly, Part Number (P/N) 204-011-728-19, internal bore and thread area for corrosion and other damage on certain Model UH-1 and

TH–1 series helicopters was published in the **Federal Register** on March 31, 1986.

AD 88–25–05, Docket No. 88–ASW–34, Amendment 39–6079, issued November 15, 1988, with an effective date of December 13, 1988, reduced the service life of the P/N 204–011–728–19 T/R grip assembly from 500 to 300 hours' time in service. Parts with 250 or more hours' time in service must be removed and replaced with a serviceable part within the next 50 hours' time in service after the effective date of the AD.

The AD also informed operators that a new replacement T/R grip assembly, P/N 205–011–711–101, having a 2,500 hour service life was available.

Since publication of the NPRM, the FAA has determined that the one-time inspection is no longer required. Based on the fact that the safety issue is resolved by AD 88–25–05 (53 FR 47944; December 29, 1988) and in light of the requirements of Executive Order 12291 (46 FR 13193; February 19, 1981), this rulemaking should be terminated.

Accordingly, I conclude that the FAA should not proceed with the adoption of the proposed rulemaking in the NPRM now pending. Therefore, the NPRM (51 FR 10876; March 31, 1986) to amend Part 39 of the FAR (14 CFR 39.13) to add an AD pertaining to Model UH–1 and TH–1 series helicopters is withdrawn.

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 11.85

Issued in Fort Worth, Texas, on July 12, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–17250 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 88–AWA–8]

RIN: 2120–ADOO

Proposed Establishment of the Phoenix Terminal Control Area and Revocation of the Phoenix Airport Radar Service Area; AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking; correction.

SUMMARY: This action corrects a typographical error in the correction to notice of proposed rulemaking for the Phoenix, AZ, Terminal Control Area which was published in the **Federal Register** on June 28, 1989, Part 4. Under the caption titled History, the words "Salt Lake City very high frequency omni-directional radio range and tactical air navigational aid" should read "Salt River very high frequency omni-directional radio range and tactical air navigational aid.".

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

Issued in Washington, DC, on July 13, 1989.

Jerry W. Ball,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–17253 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–AWP–16]

Proposed Revision of Santa Rosa, CA Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to review and extend the Santa Rosa, California Transition Area. This action will provide controlled airspace for the conduct of instrument procedures at Lampson Airport.

DATE: Comments must be received on or before September 8, 1989.

Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–1180

The official docket may be examined at the above address, Office of the Associate Chief Counsel, AWP–7.

An informal docket may also be examined during normal business hours at the above address, Airspace and Procedures Branch, AWP–530.

FOR FURTHER INFORMATION CONTACT: Dan Martin, Airspace and Procedures Specialist, Airspace. and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297–0166.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AWP–16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, AWP–530, 15000 Aviation Boulevard, Lawndale, Califirnia 90261 both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, AWP–530 at the above address. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise and extend the Santa Rosa, California Transition Area so as to include Lampson Airport. This action will provide controlled airspace for the conduct of instrument operations at Lampson Airport. Section 71.181 of Part 71 of the Federal Aviation

Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Santa Rosa, CA [Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at latitude 38°51'30" N/longitude 123°02'00" W; to latitude 39°15'00" N/longitude 123°02'00" W; to latitude 39°15'00" N/longitude 122°39'00" W; to latitude 38°47'30" N/longitude 122°39'00"; to latitude 38°27'00" N/longitude 122°39'05" W; to latitude 38°22'45" N/longitude 122°39'05" W; to latitude 38°49'30" N/longitude 123°08'28" W; thence to the point of beginning.

Issued in Los Angeles, California on July 5, 1989.

Jacqueline L. Smith,

Manager, Air Traffic Division.

[FR Doc. 89–17254 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88–AGL–25]

Proposed Alteration of VOR Federal Airways; IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This notice withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 88–AGL–25, which was published in the **Federal Register** on May 24, 1989. That NPRM proposed to realign Federal Airways V–24, V–97, V–100, V–217 and V–228 located in the vicinity of the Chicago O'Hare, IL, Airport (54 FR 22446). This action was proposed to improve traffic flow in the Chicago O'Hare airport traffic area and reduce arrival/departure delays. After futher study of the proposal, the FAA found that other airspace changes are necessary.

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

The Proposed Rule

On May 24, 1989, a Notice of Proposed Rulemaking was published in the **Federal Register** to alter the descriptions of several VOR Federal Airways located in the Chicago metropolitan area. These changes would have improved the flow of traffic in the Chicago, IL, area and would have provided air traffic controllers with additional flexibility for maneuvering traffic to reduce arrival/departure delays.

Conclusions

After further study of the proposed airway changes, the FAA found that other changes are necessary. The new airway alignments would require additional holding fixes to ensure safety. Therefore, holding fixes must be developed before these proposed airway changes are implemented.

List of Subjects in 14 CFR 71

Aviation safety, VOR Federal Airways.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 88–AGL–25, as published in the **Federal Register** on May 24, 1989 (54 FR 22446) is hereby withdrawn.

(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.)

Issued in Washington, DC, on July 12, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–17255 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 89–AWA–14]

Proposed Alteration of VOR Federal Airway V–40; MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V–40 located in the state of Michigan. The alignment, which is at the request of Transport Canada, will coincide with changes in the Canadian airspace structure. This action would improve traffic flow during transborder operations.

DATES: Comments must be received on or before September 5, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL–500, Docket No. 89–AWA–14, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions

presented are particularly helpful in the developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–AWA–14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive pubic contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V–40 located in the state of Michigan. This proposed alteration is at the request of Transport Canada to support airway changes in the Canadian airspace structure. This proposed action also is in conjunction with the Detroit Metropolitan Airport project. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6En dated January 3, 1989.

The FAA had 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, VOR federal airways.

The Proposed Amendment

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

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

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

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

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–40 [Amended]

By removing the words "From DRYER, OH;" and substituting the words "From INT DRYER, OH, 321°T(326°M) and Salem, MI, 130°T(133°M) radials; INT DRYER 000°T(005°M) and Akron, OH, 312°T(316°M) radials; DRYER;"

Issued in Washington, DC, on July 12, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–17256 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 89–ASW–24]

Proposed Establishment of Control Zone; Fort Worth Alliance Airport, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a part-time control zone at Fort Worth Alliance Airport, TX. This proposed action is necessary because Alliance Airport meets the criteria for the establishment of a control zone by the fact that there is to be a part-time federal airport traffic control tower (ATCT) at the Alliance Airport and there will be a federally certificated weather observer who will be able to take hourly and special weather observations at the Alliance Airport during the times the control zone is in effect. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the standard instrument approach procedures (SIAP) that will serve the Alliance Airport. The establishment of a control zone will allow the Alliance Airport to be used as an alternate airport under instrument flight rules (IFR) weather conditions. The proposed control zone will not include the Hicks Airfield or Northwest Regional Airport.

DATES: Comments must be received on or before September 8, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 89–ASW–24, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environment, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to

acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASW–24." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure

The Proposal

The FAA is considering an amendment to § 71.171 of the Federal Aviation Regulations (14 CFR Part 71) to establishing a part-time control zone at Forth Worth Alliance Airport, TX. This proposed action is necessary because Alliance Airport meets the criteria for the establishment of a control zone by the fact that there is to be a part-time federal ATCT at the Alliance Airport and there will be a federally certificated weather observer who will be able to take hourly and special weather observations at the Alliance Airport during the times the control zone is in effect. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the SIAP's that will serve the Alliance Airport. The establishment of a control zone will allow the Alliance Airport to be used as an alternate airport under IFR weather conditions. The ATCT is scheduled to be commissioned on December 14, 1989. The effective date of this part-time control zone will depend entirely upon the installation and certification of the ATCT. The proposed control zone will not include the Hicks Airfield or Northwest Regional Airport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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

The Proposed Amendment

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

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

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Fort Worth Alliance Airport, TX [New]

Within a 6-mile radius of the Alliance Airport (latitude 32°59'11" N., longitude 97°19'02" W.). This control zone is effective during the specific dates and times established in advance by a notice to airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, TX on July 5, 1989.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 89–17251 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 71 and 73

[Airspace Docket No. 89–ASW–3]

Proposed Alteration of Restricted Areas R–2401 and R–2402; Fort Chaffee, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to subdivide the existing Restricted Area R–2401 Fort Chaffee, AR, into two areas, R–2401A and R–2401B. This action allows the more efficient use of airspace by enabling that portion of the area not being used by the military to be released for access by civil traffic. In addition, R–2402 is amended to reflect minor corrections to the boundary description and time of designation. The proposal will also amend the Continental Control Area to reflect R–2401A and R–2401B.

DATES: Comments must be received on or before September 5, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 89–ASW–3, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Rich Uhrick, Military Operations Branch (ATO–140), Operations Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9363.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties ar invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposals. Communications should identify the

airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89–ASW–3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to subdivide the existing Restricted Area R–2401 Fort Chaffee, AR, into two areas, R–2401A and R–2401B. When R–2401 is activated for fast moving military aircraft, it greatly restricts air traffic inbound to Fort Smith Airport. Subdividing the area would, therefore, result in more efficient use of airspace by allowing increased access for civil traffic inbound to Fort Smith Airport. Additionally, this action amends R–2402 by effecting minor corrections to the boundary description. This action would more accurately reflect the boundaries of R–2402 and would not result in an increase in restricted airspace. Further, this action would establishe the time of designation for R–2401A, R–2401B and amend the time of designation for R–2402 resulting in a decreased restriction on the flying public. In addition, the Continental Control Area would be amended to reflect R–2401A and R–2401B. Sections 71.151 and 73.24 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are 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 Parts 71 and 73

Aviation safety, Continental control area, Restricted areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

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

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

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

2. § 71.151 is amended as follows:

§ 71.151 [Amended]

R–2401 Fort Chaffee, AR [Remove]

R–2401A Fort Chaffee, AR [New]

R–2401B Fort Chaffee, AR [New]

PART 73—SPECIAL USE AIRSPACE

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

Authority. 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

4. § 73.24 is amended as follows:

§ 73.24 [Amended]

R–2401 Fort Chaffee, AR [Remove]

R–2401A Fort Chaffee, AR [New]

Boundaries. Beginning at lat. 35°18'17" N., long. 94°12'00" W., to lat. 35°17'45" N., long. 94°15'35" W.; to lat. 35°15'35" N., long. 94°18'00" W.; to lat. 35°13'50" N., long. 94°15'00" W.; to lat. 35°13'50" N., long. 94°12'00" W.; to the point of beginning.

Designated altitudes. Surface to and including 30,000 feet MSL.

Time of designation. Sunrise to sunset, Monday through Sunday; other times by NOTAM.

Controlling agency. FAA, Memphis ARTCC.

Using agency. U.S. Army, Commanding General, Fort Chaffee, AR

R–2401B Fort Chaffee, AR [New]

Boundaries. Beginning at lat. 35°17'45" N., long. 94°15'35" W., to lat. 35°17'37" N., long. 94°17'23" W.; to lat. 35°16'06" N., long. 94°19'03" W.; to lat. 35°15'35" N., long. 94°18'00" W.; to the point of beginning.

Designated altitudes. Surface to and including 30,000 feet MSL.

Time of designation. Sunrise to sunset, Monday through Sunday; other times by NOTAM.

Controlling agency. FAA, Memphis ARTCC.

Using agency. U.S. Army, Commanding General, Fort Chaffee, AR.

R–2402 Fort Chaffee, AR [Amended]

By removing the existing boundaries and time of designation and substituting the following:

Boundaries. Beginning at lat. 35°18'09" N., long. 94°03'00" W., to lat. 35°17'00" N., long. 94°03'00" W.; to lat. 35°17'00" N., long. 94°01'00" W.; to lat. 35°10'20" N., long. 94°01'00" W.; thence west along Arkansas State Highway No. 10. to lat. 35°11'33" N., long. 94°12'00" W.; to lat. 35°13'50" N., long. 94°12'00" W.; to lat. 35°18'10" N., long. 94°12'00" W.; to lat. 35°18'12" N., long. 94°09'51" W.; thence east along Arkansas State Highway No. 22 to the point of beginning.

Time of designation. Sunrise to sunset, Monday through Sunday; other times by NOTAM.

Issued in Washington, DC, on July 12, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89–17252 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana—Proposed Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments consist of proposed changes to the Indiana Surface Mining Rules concerning: (1) The definition of "cemetery"; (2) the length of time allowed for the State to determine the completeness of a lands unsuitable petition; and (3) nonsubstantive word changes and correction of typographical errors. The amendments are intended to revise the Indiana program to be consistent with the corresponding Federal regulations and to clarify the language of the rules.

This notice sets forth the times and locations that the Indiana program and the proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on August 23, 1989; if requested, a public hearing on the proposed amendments is scheduled for 1:00 p.m. on August 18, 1989; and requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on August 8, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Mr. Richard D. Rieke, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the amendments, a listing of any scheduled public meeting, and all written comments received in response to this notice will be available for public review at the addresses listed below, during normal business hours Monday through Friday, excluding holidays. Each requester may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Indianapolis Field Office.

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204. Telephone: (317) 226–6166.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240. Telephone (202) 343–5492.

Indiana Department of Natural Resources, 608 State Office Building, Indianapolis, IN 46204. Telephone (317) 232–1547.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

The Secretary of the Interior conditionally approved the Indiana program, effective July 29, 1982. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of Amendments

By letter dated June 12, 1989 (Administrative Record No. IND–0649), the Indiana Department of Natural Resources (IDNR) submitted proposed amendments to the Indiana program at 310 Indiana Administrative Code (IAC) 12–1–3 and 310 IAC 12–2–7. The proposed changes are briefly summarized below: The amendment to 310 IAC 12–1–3 changes the definition of "cemetery" from "any land dedicated and used for the interment of human remains pursuant to the Indiana General Cemetery Act (IC 23–14–1–1)" to "any area of land where human remains are interred." This revision is made in response to an OSMRE notification to the State specifying the need to change the State's definition of "cemetery."

The amendment to 310 IAC 12–2–7 changes from forty-five (45) to thirty (30) the number of days the State is allowed for determining the completeness of a lands unsuitable petition. The State program amendment is intended to bring the Indiana rule into conformance with the counterpart Federal regulation. Other changes to 310 IAC 12–2–7 are stylistic or correction typographical errors.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by IDNR satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendments are deemed adequate, they will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the 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 the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business August 8, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and 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 who 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

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet the OSMRE representatives to discuss the proposed amendment may request a meeting at the Indianapolis Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will

be included in the Administrative Record.

List of Subjects in 30 CFR Part 914

Coal Mining, Intergovernmental relations, Surface mining, Underground mining.

Carl C. Close,

Assistant Director Eastern Field Operations.

Date: July 13, 1989.

[FR Doc. 89–17237 Filed 7–21–89; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 130

[FRL–3620–1]

Water Quality Planning and Management; Reopening of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Request for comment and extension of public comment period for proposed rule.

SUMMARY: EPA is announcing the reopening of the public comment period on proposed amendments to 40 CFR Part 130, the Water Quality Planning and Management Regulation. On January 12, 1989, EPA published a proposed rule to amend Part 130 together with 40 CFR Parts 122 and 123, and invited public comment (54 FR 1300, January 12, 1989). The public comment period closed February 13, 1989. On June 2, 1989, EPA published a final rule (54 FR 23868) to amend Parts 122, 123 and § 130.10 to address, among other things, the listing of waters and development of individual control strategies under section 304(1) of the CWA. However, EPA did not finalize amendments to §§ 130.7 and 130.8, which were also included in the January 12 proposal, because EPA has decided to reopen and extend the public comment period on these proposed amendments.

DATE: Written comments must be submitted on or before September 22, 1989.

ADDRESSES: Submit three copies of comments to Judith Leckrone, Assessment and Watershed Protection Division, Office of Water Regulations and Standards (WH–553), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. The public record for this proposed amendment is available at the EPA Library, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Judith Leckrone, Assessment and Watershed Protection Division, Office of Water Regulations and Standards (WH–553), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. (202) 382–7056.

SUPPLEMENTARY INFORMATION: The Clean Water Act (CWA) contains a number of provisions for developing pollutant discharge controls as needed to meet water quality standards. Today EPA is reopening the public comment period on proposed amendments to EPA's regulations that implement sections 303(d) and 305(b) of the Act. Under section 303(d) of the Clean Water Act, the States are required to identify water quality limited segments, establish a priority ranking for these waters, and develop total maximum daily loads (TMDLs). States must submit the identified waters and the TMDLs to EPA for approval "from time to time."

Under section 305(b) of the Act, states are required to submit reports to EPA every two years which describe the water quality of all navigable waters and then compare this quality with the water quality goals of the Clean Water Act.

On January 12, 1989, EPA proposed to require that States submit to EPA the lists of water quality limited segments under section 303(d) of the CWA as part of the biennial water quality reports required by section 305(b) of the CWA (54 FR 1300, January 12, 1989). EPA also proposed certain data requirements, and review and approval criteria to be used by the States and EPA for development and review of the lists of waters developed under section 303(d).

As explained in the preamble in the **Federal Register** on January 12, EPA proposed these amendments for several reasons. Most importantly, the changes would provide an on-going national inventory of waters with water qualtiy problems and provide a basis for setting priorities for assessment and control actions, enhance EPA's and the State's abilities to track specific water quality problems over time, help ensure that the States develop lists of waters on a consistent national basis, and ensure that the lists are periodically updated with the most recent data available.

Improved lists of waters would also strengthen the implementation of other section 303(d) requirements such as establishing a priority ranking for developing total maximum daily loads (TMDLs).

In the past, the quality of the State's section 303(d) lists and TMDLs has been highly variable. A recent report by the General Accounting Office, *More EPA Action Needed To Improve the Quality of Heavily Polluted Waters* (January 1989, GAO/RCED–89–38), criticized EPA and the States for their lack of activity and consistency in identifying needs for and developing TMDLs. Because of this report, and past and recent litigation, and because permitting and nonpoint source control programs need to be based on reasonable, up-to-date evaluations of water quality problems, EPA believes that it should emphasize the listing of waters under section 303(d), and thus strengthen the national program for identifying and developing controls for water quality problems.

EPA is extending the comment period for these proposed amendments because many reviewers were confused about how these proposed amendments relate to the lists and individual control strategies required under section 304(l) of the CWA. EPA did not propose to repeat the one-time listing of waters and developing of individual control strategies under section 304(l). Instead, the proposed amendments address the on-going listing requirements of section 303(d) and the reporting requirements under section 305(b) of the Clean Water Act. Sections 303(d) and 305(b) are longstanding and ongoing requirements established by Congress in 1972. Specifically, the proposed amendments would require the States to include their section 303(d) lists of waters in their biennial section 305(b) reports.

EPA is also extending the comment period on the proposed amendments in order to solicit additional comments on the implications of adding new emphasis to the section 303(d) program. The Agency is also responding to requests for a longer public comment period on these amendments in order to evaluate how they might affect related State and EPA programs.

In addition to all comments received in response to this notice, EPA will consider all the comments on the proposed amendments to Part 130.7 and 130.8, and Part III.B.4 of the preamble which wre received by EPA during the previous public comment period that began January 12.

In particular, EPA is interested in receiving responses to the following questions:

(1) How would improved identification and regular reporting of water quality limited segments and the subsequent development of TMDLs affect the permitting process for point sources of pollution? For example, would it expedite or hinder the issuance of NPDES permits?

(2) How would improved identification and regular reporting of

water quality limited segments and the subsequent development of TMDLS affect existing nonpoint source control programs? How should States consider nonpoint source contributions in the development of TMDLs.

(3) Should EPA require States to rely on and interpret the narrative water quality criteria in the absence of numeric water quality criteria, for the purposes of section 303(d).

(4) Should EPA require States to provide public participation in the development of the lists of water quality limited segments?

(5) Are EPA's proposed documentation requirements at proposed paragraphs 130.7(b)(6) adequate? Are they too burdensome? Should the regulations be more or less specific about the documentation requirements?

(6) Section 303(d) requires the States to "establish a priority ranking" for the development of TMDLs for the water quality limited segments that they identify. How should States set these priorities for the water quality limited segments? For example, should States set priorities based on human health or aquatic life concerns, or public interest concerns? Should EPA be more or less specific about how States set these priorities?

(7) When should these requirements go into effect? Should the lists of water quality limited segments be required to be a part of the 1990 section 305(b) reports, or should the requirements start in 1992 or even 1994?

(8) Should EPA require the States to report these lists in a standard format?

(9) Besides the changes proposed on January 12, 1989, should EPA propose additional changes to Part 130?

Date: July 12, 1989.

Rebecca Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89-17264 Filed 7-21-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1094-AA37

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: The Office of Hearings and Appeals is reopening the period for the submission of comments on the proposed rules providing procedures for administrative review of decisions of the Office of Surface Mining Reclamation and Enforcement under the permanent regulatory program established by the Surface Mining Control and Reclamation Act of 1977.

DATES: The comment period on the proposed rules is extended until August 23, 1989.

ADDRESSES: Comments may be mailed or delivered in person to: Director, Office of Hearings and Appeals, U.S. Department of the Interior, Room 1111, 4015 Wilson Boulevard, Arlington, Virginia 22203.

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

SUPPLEMENTARY INFORMATION: On March 8, 1989, the Office of Hearings and Appeals published proposed rules amending the procedures for administrative review of decisions of the Office of Surface Mining Reclamation and Enforcement under the permanent regulatory program (54 FR 9852-55 (Mar. 8, 1989); 54 FR 10784-10794 (Mar. 15, 1989)). The National Wildlife Federation and the Environmental Policy Institute have requested that the period for comment be reopened, based in part on their interest in commenting on the unpublished decision in *Peabody Coal Co.* v. *United States of America*, CIV 86-502 PCT CLH (D. Ariz., Mar. 11, 1988), and on the settlement agreement in *Peabody Coal Co.* v. *Lujan*, Civil No. 87-3462 (RCL) (D.D.C., filed Dec. 21, 1987), stating that the Department would initiate rulemaking proceedings to amend 43 CFR 4.1360-4.1388 and that the proposed rules published on March 8, 1989, address some of the plaintiffs' concerns in the latter case.

We are reopening the comment period until August 23, 1989.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Mines, Public lands, Surface mining.

Date: July 14, 1989.

James E. Byrnes,

Director.

[FR Doc. 89-17224 Filed 7-21-89; 8:45 am]

BILLING CODE 4310-79-M

Bureau of Land Management

43 CFR Part 3160

[AA-630-09-4211-02]

RIN 1004-AA67

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 6—Hydrogen Sulfide Operations; Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: The proposed rule that would issue Onshore Oil and Gas Order No. 6 under 43 CFR Part 3160 was published in the Federal Register on May 16, 1989 (54 FR 21075), with a 60-day comment period. The comment period is being extended to July 31, 1989, in response to public requests.

DATE: The period for the submission of comments is hereby extended to July 31, 1989. Comments received or postmarked after this date may not be considered as part of the decisionmaking process on issuance of the final rule.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Chris Hanson, (414) 291-4421 or Sie Ling Chiang, (202) 653-2127.

July 18, 1989.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

[FR Doc. 89-17193 Filed 7-21-89; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-301, RM-6672 and RM-6736]

Radio Broadcasting Services; Carthage and Webb City, Missouri

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separate conflicting petitions. The first petition, filed by Carthage Broadcasting Company, proposes the substitution of FM Channel 236C2 for Channel 285A at Carthage, Missouri, and modification of the license

for Station KRGK(FM), to specify operation on Channel 236C2. To accommodate Channel 236C2 at Carthage it would be necessary to substitute Channel 250A for 236A at Webb City, Missouri, and modify the license of Station KKLL(FM) accordingly. The coordinates for Channel 236C2 at Carthage are 37–17–54 and 94–21–49, which includes a site restriction 13.9 kilometers north of the community. The coordinates for Channel 250A at Webb City are 37–06–11 and 94–24–11, the existing site for Station KKLL(FM). The second petition was filed by Don and Gail Stubblefield, requesting the substitution of Channel 236C2 for Channel 236A and modification of the license for Station KKLL(FM), Webb City, Missouri, to reflect the Class C2 channel. The coordinates for Channel 236C2 at Webb City are 37–16–09 and 94–33–04. Those coordinates include a site restriction 15.4 kilometers northwest of the community. In comments, parties should compare the gain area provided by each proposal including the population and area with expanded service.

DATES: Comments must be filed on or before September 7, 1989, and reply comments on or before September 22, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Allan G. Moskowitz, Kaye, Scholer, Fierman, Hays & Handler, 901—15th Street, NW., Suite 1100, Washington, DC 20005 (Counsel to Carthage Broadcasting Company).

Don and Gail Stubblefield, Radio Station KKLL–FM, Group 5, Box 136, Joplin, Missouri 64801.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–301, adopted June 16, 1989, and released July 6, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

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

[FR Doc. 89–17204 Filed 7–21–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 88–159; RM–6204]

Radio Broadcasting Services; New London, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission denies the request of Kevin O'Kane to allot Channel 259A to New London, New Hampshire. Upon review, it is found that Channel 259A cannot be allotted to New London in compliance with the Commission's minimum distance separation requirements. Rather, it conflicts with the proposed allotment of Channel 259A to Royalton, Vermont. See MM Docket 87–410, 2 FCC Rcd 6102 (1987) and counterproposals thereto. With this action, this proceeding is terminated.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–159, adopted June 30, 1989, and released July 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Karl A. Kensinger,

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

[FR Doc. 89–17188 Filed 7–21–89; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 54, No. 140
Monday, July 24, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farmer-Owned Reserve Loan Extensions—1985 Crop Corn and Grain Sorghum Loans

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Determination.

SUMMARY: In accordance with 7 CFR 1421.41 the Commodity Credit Corporation (CCC) is offering producers the opportunity to extend 1985-crop Farmer-Owned Reserve (FOR) corn and grain sorghum loans which mature on or after August 31, 1989. These loans may be extended for six months with producers receiving at settlement a storage payment with respect to the grain pledged as collateral for such loan.

These determinations provide for the enhanced administration of CCC programs and provide affected producers with notice of CCC's determinations with respect to such loans.

EFFECTIVE DATE: July 24, 1989.

ADDRESS: Comments concerning this notice should be directed to Thomas VonGarlem, Assistant Deputy Administrator, State and County Operations, USDA–ASCS, Room 3096, South Building, P.O. Box 2415, Washington, DC 20013.

The Regulatory Impact Analysis describing the options considered in developing this notice is available on request from Thomas VonGarlem at this address.

FOR FURTHER INFORMATION CONTACT: Thomas VonGarlem (202) 447–6761.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been designated as "non-major".

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment; therefore, neither an environmental assessment nor an environmental impact statement is needed.

The title and number of the Federal Assistance Program to which this notice applies are: Title-Commodity Loans and Purchases, Number 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that this action will not increase the federal paperwork burden for individual, small businessmen and other persons. The Commodity Credit Corporation (CCC) is also not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice. Therefore, the Regulatory Flexibility Act is not applicable.

Keith Bjerke, Executive Vice President, Commodity Credit Corporation hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities because the action taken in this rule will reduce uncertainty in the operation of the program and will have the effect of stabilizing commodity supply and demand situations.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 23, 1983).

Background

CCC makes available price support loans to producers of wheat and feed grains in accordance with 7 CFR Part 1421. On September 1, 1988 (53 FR 34004) CCC published a final rule in the **Federal Register** which amended such part to provide that certain crop year CCC price support loans could be extended. The following statement was included in that final rule:

II. Background of Proposed Changes to 7 CFR Part 1421

CCC makes available price support to eligible producers through a variety of means, including purchase agreements and nonrecourse loans. Producers who comply with applicable program requirements are afforded the opportunity to obtain CCC price support loans for a term determined by CCC. These loans are made available in accordance with several sections of the Agricultural Act of 1949, as amended (the 1949 Act). The terms and conditions of the loans are set forth in the loan agreement. See 7 CFR 1421.1–1421.32 for feed grain, rice, soybean and wheat price support loans and purchase agreements (53 FR 20280, June 3, 1988). In accordance with the provisions of the loan agreement and 7 CFR 1421.6, these loans mature no later than the last day of the ninth calendar month following the month in which the loan application is made, unless extended by CCC. In the event CCC determines to extend such loans, the producer receives actual notice of the terms and conditions of the offered extension. The producer is not, however, required to accept the offered extension.

In accordance with section 110 of the 1949 Act CCC may make available extended price support loans to producers who have specified maturing regular wheat and feed grain price support loans. These loans are referred to as Farmer-Owned Reserve (FOR) loans. The minimum and maximum levels of the wheat and feed grain reserves are determined annually. The terms and conditions of the loans are set forth in the loan agreement. See 7 CFR 1421.740–54 (53 FR 11,239, April 26, 1988).

Section 110 of the 1949 Act provides that, whenever the total quantity of wheat pledged as collateral for FOR loans is less than 300 million bushels and the market price for wheat is less than 140 percent of the current price support level, entry into the reserve must be allowed. Currently, 395 million bushels are in the FOR wheat reserve and wheat prices are in excess of 140 percent of the current price support rate. With respect to feed grains, the minimum FOR level is 450 million bushels and the minimum market price is 140 percent of the current price support rate. Currently, 1.06 billion bushels of corn, 54 million bushels of sorghum and 50 million bushels of barley are in the FOR feed grain reserve. Corn prices exceed 140 percent of the current price support rate.

Prior to the enactment of the Food Security Act of 1985 (the 1985 Act), which amended section 110 of the 1949

Act, the term of a FOR loan could not exceed 5 years. The 1985 Act amended section 110 to provide for FOR loans of not less than 3 years with extensions as warranted. However, prior to this amendment, producers possessed a substantial number of FOR loans which were maturing and, due to market conditions, the loan collateral would be forfeited to CCC. In order to provide greater flexibility to producers, CCC established the Special Producer Storage Loan Program in accordance with the CCC Chapter Act, as amended. The terms and conditions of these loans are set forth in the loan agreement. See 7 CFR 1421.900–1421.917.

In January and March 1988, after evaluating existing and projected supply and demand conditions for wheat and feed grains, CCC determined and announced that certain price support loans would be extended and that certain loans would not be extended. Accordingly, with respect to loans that were not extended, producers are required to comply with the terms and conditions of their loan agreements which require repayment of the loan or forfeiture to CCC of the loan collateral by a specified date.

Following the announcement of these decisions, the State of Minnesota and several Minnesota producers brought an action in the United States District Court of the District of Minnesota which alleged that the actions taken concerning these loans were not made in accordance with statutory requirements. Among the allegations, plaintiffs contend that these decisions were not made in accordance with the Administrative Procedure Act, as amended, 5 U.S.C. 551 et seq. Subsequently, on July 22, 1988, based upon the United States Magistrate's Report and Recommendation, the United States District Court entered an order enjoining the use of two intra-agency notices which were used by the Agricultural Stabilization and Conservation Service (ASCS) to notify State and County ASCS Offices of these decisions.

It is the position of CCC that the provisions of the Administrative Procedure Act, as amended, are not applicable to these decisions since 5 U.S.C. 553(a)(2) specifically exempts agencies from conducting proposed rulemaking actions with respect to "a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." It is also the position of CCC that the Statement of Policy signed by the Secretary of Agriculture on July 20, 1971 (see 36 FR 13804), which provided that, in certain specified instances, proposed rulemaking would be undertaken by all agencies of the Department notwithstanding the exemption set forth in 5 U.S.C. 553(a)(2) is not applicable to the types of actions involved in these decisions since proposed rulemaking actions would be impracticable.

However, in order to alleviate the concerns of interested parties regarding the procedure which CCC utilized in making these decisions and to provide market stability, comments were requested with respect to proposed amendments to the regulations of CCC which are set forth in Title 7 of the Code of Federal Regulations. These proposed amendments would amend 7 CFR 1421.6 to provide that 1987 and subsequent crop price support loans for feed grains, rice, soybeans and wheat would not be subject to any additional extension of the original loan term of nine months. Section 1421.6 would also be amended to provide that 1985 and 1986 crop loans of wheat, barley, oats and soybeans would not be extended at maturity and that producers with 1985 and 1986 crop corn and grain sorghum loans which mature on March 31, 1988 through and including December 31, 1988 would be provided the opportunity to extend such loans for one year. The proposed rule would also amend the FOR program regulations which are set forth at 7 CFR 1421.741 to provide the 1984 crop FOR loans which mature on March 31, 1988 through and including December 31, 1988 may be extended for one year and that 1983 and prior crop year FOR loans would not be extended.

The proposed rule would also amend the regulations at 7 CFR 1421.900–1421.917 which set forth the regulations governing the special producer storage loan program. The basis for the program was explained in the preamble of the rule which set forth the initial regulations which established the program:

> The Farmer-Owned Grain Reserve Program has been implemented for wheat, corn, barley, sorghum, and oats in accordance with the provisions of section 110 of the Agriculture Act of 1949, as amended. Producers with matured grain reserve loans will have utilized the entire period of their reserve loan agreement which is available for the commodity. Normally, producers with matured grain reserve loans would be required to redeem the loan collateral or forfeit the collateral to CCC in full satisfaction of the loan obligation. However, under the Special Producer Storage Loan Program, producers will be given the opportunity to pledge the collateral securing a matured grain reserve loan as collateral for a loan obtained under the new program. 50 FR 16221 (April 25, 1985).

The program was determined to be necessary since, at that time, section 110 of the 1949 Act specified that FOR loan agreements could not be for a term in excess of 5 years. Section 110 of the 1949 Act was subsequently amended by the Food Security Act of 1985 by deleting the 5-year maximum limitation and by providing that FOR loans could be extended as warranted by market conditions. Accordingly, it has been determined that this program is no longer necessary. Therefore, the proposed rule would delete the regulations which set forth the provisions which were used to make Special Producer Storage Loans and would also specify that maturing Special Producer Storage Loans will not be extended.

The quantities of outstanding CCC loan collateral as of August 17, 1988 which would be affected by the proposed amendments are as follows:

[Millions of bushels]

Program crop year	Wheat	Corn	Sorghum	Barley	Oats	Soybeans
Regular Loans:						
1985	6	*76	*4	2	0	2
1986	23	*454	*27	11	0	7
1987	29	532	11	12	0	44
Farmers-Owned Reserve (FOR) Loans:						
1983 & Prior [1]	166	0	0	3	0	
1984	*71	281	*11	*14	*0	
1985 [2]	158	781	43	33	0	
Special Producer Storage (SPSL) Loans	0	110	17	25	1	

(Asterisks denote loans which would be available for extension.)

[1] These loans do not begin to mature until 1990.
[2] These loans do not begin to mature until 1989.

Basis For CCC's Actions Regarding CCC Price Support Loans

In January and March 1988, CCC announced that certain CCC price support loans would be extended and that certain loans would not be extended. CCC is also announced that 1986 crops of wheat and feed grains would not be allowed entry into the FOR. These decisions were based upon market conditions which existed at that time. These decisions were based upon expected 1988 normal crop production. In making these determinations, CCC took into account the impact the decisions would have on producers of wheat, feed grains and soybeans as well as on the ultimate users of these products.

At that time, excessive surpluses of these crops existed as the result of overproduction in previous years. These excessive surpluses had occurred due in larger part to the loss of export markets from 1981–1985. In order to reduce these excessive surpluses, the Food Security Act of 1985 amended the 1949 Act to mandate acreage reduction programs for wheat and feed grains and also mandated the use of export enhancement programs.

Accordingly, CCC's decisions in January and March 1988 were based in large part upon a concern to maintain regained export markets. The U.S. share of export markets for wheat had increased from 29 percent in the 1985–1986 marketing year to 42 percent in the 1987–1988 marketing year, still below the 1981–1982 marketing year level of 48 percent. With respect to corn, such U.S. share had increased from 58 percent in the 1985–1986 marketing year to 78 percent in 1987–1988 marketing year, still below the 1979–1980 marketing year level of 82 percent. By retaining these markets through the availability of grain from CCC inventory and from free stocks, U.S. producers would be able to market larger quantities of 1988 and subsequent crops. At that time, estimated 1988 crop production was projected to be less than the combined total of 1988 projected uses and would result in sharp declines in both total carryover stocks and free stocks. Accordingly, access to CCC stocks and loan collateral was determined to be necessary.

However, the production of 1988 crops of many commodities, including wheat, feed grains and soybeans, has been severely reduced by the drought conditions which exist throughout major agricultural regions of the United States. For example, on May 10, 1988 the estimated 1988 production of corn was 7.3 billion bushels. These estimates have declined to 5.2 billion bushels on July 12, 1988 and to 4.48 billion bushels on August 11, 1988. Thus, at this time, even greater accessibility to CCC inventory and loan collateral is necessary to meet demand than previously was determined to exist in January and March 1988. Similarly estimated wheat production has fallen from 2.17 billion bushels to 1.82 billion bushels, while soybean production has fallen from 1.88 billion bushels in May 1988 to 1.47 billion bushels in August 1988.

The decrease in feed grain and soybean production, together with the reduction in other feed supplies, has caused significant and unexpected increases in feed prices for livestock and poultry producers and has also resulted in the unavailability of feed in some regions of the country. These factors have resulted in the liquidation of livestock herds and poultry flocks which has adversely affected producers' income.

The United States' supply of wheat has also been reduced due to the 1988 drought. Coupled with the expansion of U.S. export markets during the past year, the drought has resulted in the smallest supply of U.S. wheat in nearly a decade. Durum wheat production was reduced 41 percent from 1987, while other spring wheat production is down 53 percent. Similar reductions have occurred as a result of the drought in 1988 oat and barley production. Barley production is down 45 percent and oat production, also down 45 percent will be the lowest since 1866. Accordingly, substantial quantities of oats will be imported into the U.S. during the next year.

In summary, early 1988 estimates showed that the 1988 use of wheat, feed grain and soybeans would exceed 1988 production thereby necessitating access to CCC inventory and CCC loan collateral. The effects of the 1988 drought further necessitate such accessibility.

In order to ensure orderly marketing of these commodities, including 1988 production, it has been determined that some crop year loans with 1988 maturity dates will be extended until 1989. By allowing some crop year loans to mature in accordance with the loan agreements previously entered into by producers with CCC and by allowing producers to extend certain other loans, CCC's action will provide: (1) Producers the opportunity to deliver grain into the market in an orderly fashion with very minimal forfeitures to CCC; (2) Purchasers, both domestic and foreign, with reliable supplies, and (3) Parties who transport and handle such commodities sufficient time to determine the most efficient manner to move these commodities from the producer to a consumer.

Section 110 of the 1949 Act provides for the implementation of "a program under which producers of wheat and feed grains will be able to store wheat and feed grain when such commodities are in abundant supply, extend the time period for their orderly marketing, and provide for adequate but not excessive carryover stocks to ensure a reliable supply of the commodities." It is generally accepted that an adequate carryover supply of wheat is .75–1.0 billion bushels and that an adequate carryover supply of corn is 1.5–2.0 billion bushels. Sections 107D and 105C of the 1949 Act provide, with respect to wheat and feed grains, respectively that if the estimated carryover on the first day of the marketing year for a crop will exceed 1 billion bushels for wheat and 2 billion bushels for corn, acreage reductions programs must be implemented. As of August 29, 1988, ending 1988/89 marketing year wheat stocks are estimated to be 597 million bushels and ending 1988/89 marketing year corn stocks are estimated to be 1.58 billion bushels. Accordingly, assuming that the quantities specified in sections 105C and 107D are adequate carryout quantities, the U.S. will have minimally adequate or less than adequate carryovers of these crops going into the 1989 marketing year. Section 110 of the 1949 Act provides that the FOR program is to be conducted only when wheat and feed grains are in "abundant supply." Such supplies are clearly not abundant and are projected to be below even "adequate carryover" levels. Section 110 also provides that the FOR must be conducted in a manner which does not curtail free market activity. Further entry of grain into the FOR would, by the end of the marketing year, result in record high levels of grain in the FOR and would cause serious market disruptions.

Based upon these estimates, entry of any further crops into the FOR would not only be contrary to market demands but would also violate the provisions of section 110 of the 1949 Act which require that free market activity not be disrupted. Currently the following quantities are in the FOR as of August 17:

[Millions of bushels]

Program crop year	Wheat	Corn	Sorghum	Barley	Oats
1983 and prior	166	0	0	0	0
1984	71	281	11	14	0
1985	158	781	43	33	0
Total	395	1,062	54	50	0

Wheat FOR loans for 1983 and prior crops do not begin to mature until 1990 and 1985 wheat and feed grain FOR loans begin to mature early in 1989. Accordingly, sufficient quantities of FOR loan collateral exist and are in excess of statutory minimums set forth in section 110 of the 1949 Act which must be maintained when prices fell below specified levels.

On July 7, 1988, CCC published in the **Federal Register** a proposed notice of determination with respect to the entry of 1988 crops into the FOR. No comments were received during the 30-day comment period. CCC proposed to allow entry into the FOR only if market prices for wheat and feed grains fell below 140 percent of the respective 1988 crop price support rate and if levels in the FOR fell below 300 million bushels of wheat and 450 million bushels of feed grains. Subsequently, the Disaster Assistance Act of 1988 (the 1988 Act) was enacted principally in response to the 1988 drought. The 1988 Act provided approximately $3.9 billion of disaster related relief measures to producers affected by the 1988 drought and other specified natural disasters.

Included in the 1988 Act were provisions which relate to the FOR Program. Section 303(b) of the 1988 Act provides greater accessibility to FOR stocks which are acquired through the exchange of CCC commodity certificates. Section 303(a) of the 1988 Act provides that, once market prices of a commodity attain the FOR release level during the 1988 marketing year, producers may repay, without penalty, FOR loans during the remainder of such marketing year without regard to market prices. The Joint Explanatory Statement of the Committee of Conference which was prepared in connection with the 1988 Act states as follows:

> The conferees believe that the Secretary should operate the Farmer-Owned Reserve in a way that will remove wheat and feed grains from the market during times of surplus supply and increase market supply during times of short supply. Current Farmer-Owned Reserve quantities of wheat and feed grains exceed statutory minimums. The Secretary has previously determined not to allow entry of 1987 crops of wheat and feed grains into the reserve. In making any subsequent determinations as to whether to permit entry of 1988 or other crops of such commodities into the reserve, the Secretary should take into consideration the reduced production of 1988 crops of wheat and feed grains as a result of the drought, the size of the Farmer-Owned Reserve the impact of such entry upon the availability of these commodities in the marketplace, including, but not limited to consideration of the impact on the domestic livestock and poultry industry, the ethanol industry, and export share.

See 134 Cong. Rec. H. 6474 (daily ed. August 8, 1988).

Accordingly, in addressing the manner in which the FOR is to be conducted, Congress has specifically recognized that statutory FOR minimums have been maintained and that entry of 1987 crops will not be permitted.

Since September 1, 1988, CCC has continued to review supply and demand situations for feed grains. Based upon the decreased production in the United States and throughout the world, supplies of feed grains in the United States are currently less than current and projected demand, as was the case throughout 1988. Accordingly, since January 1, 1989 CCC has not allowed the extension of maturing CCC price support loans. However, CCC has now determined that 1985-crop corn and grain sorghum FOR loans which mature on or after August 31, 1989 may be extended for a period of 6 months. By allowing some crop year loans to mature in accordance with the loan agreements previously entered into by producers with CCC and by allowing producers to extend 1985 crop loans, CCC's action will ensure: (1) Producers the opportunity to deliver grain into the market in an orderly fashion with minimal forfeitures to CCC; (2) purchasers, both domestic and foreign, with reliable supplies, and (3) parties who transport and handle such commodities sufficient time to determine the most efficient manner to move these commodities from the producer to a consumer. In addition, this action will ensure that quantities of loan grains in the FOR will continue to exceed 450 million bushels, as required by section 110 of the 1949 Act when certain market conditions exist. Producers with 1985 crop FOR loans who exercise this option to extend will receive storage payments at a rate of 26.5 cents per bushel per year or .0726 cents per bushel daily payable at the time the loan is settled. Producers will, in accordance with 7 CFR § 1421.741 receive actual notice of this offered extension.

Since the action to extend these loans is authorized by 7 CFR 1421.741, no proposed rule making is required. Accordingly, CCC makes the following determination:

Notice of Determination

Producers with 1985-crop corn and grain sorghum FOR loans which mature on or after August 31, 1989 will, in accordance with 7 CFR 1421.741, be given actual notice of the opportunity to extend such loans for a period of six months. Storage programs which are earned by a producer during this time will be made by CCC to the producer at the time of the loan settlement.

Authority: 7 U.S.C. 1445e; 15 U.S.C. 714b and 714c.

Signed at Washington, DC on July 13, 1989.

Keith D. Bjerke,

Executive Vice President,

Commodity Credit Corporation.

[FR Doc. 89-17212 Filed 7-21-89; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Draft Supplement to the Final Environmental Impact Statement for the Regional Guide for the South

AGENCY: Forest Service, USDA.

ACTION: Notice; extension of due date for comments concerning the scope of the analysis for the proposed draft and final supplement to the final

environmental impact statement for the Regional Guide for the Southern Region filed in June 1984.

SUMMARY: The process for developing the draft supplement to the Regional Guide EIS is expected to take about 2 years. The Forest Service has begun the NEPA process for developing interim guidelines for protecting and enhancing Red-cockaded Woodpecker habitat while the Regional Guide supplement is being prepared. A scoping letter and a proposal for the interim guidelines has been distributed to the public for review and comment. In order to avoid the possible confusion of having two proposals and scoping letters out for public review and comment simultaneously, distribution of the scoping letter for the Regional Guide supplement has been delayed. It will be distributed to the public the week of August 21–25, 1989, following the 30 day scoping period for the interim guidelines.

DATES: The July 3, 1989, due date for comments published in the **Federal Register** on May 5, 1989 (54 FR 19422) for the Regional Guide supplement is being extended to October 10, 1989.

FOR FURTHER INFORMATION CONTACT: David P. Smith, 1720 Peachtree Road, NW., Atlanta, Georgia 30367. Phone No. (404) 347–4338.

Date: July 17, 1989.

Marving C. Meier,

Deputy Regional Forester.

[FR Doc. 89–17217 Filed 7–21–89; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Asian Roundtable Conference

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the United States Commission on Civil Rights will convene an Asian Roundtable Conference at 9:00 a.m. on July 29, 1989, and adjourn at 5:00 p.m., at Cole Hall of the University of California at San Francisco, 513 Parnassus Avenue, San Francisco, CA 94143. The purpose of the conference is to elicit input to help set the Commission's agenda for the 1990s on Asian civil rights issues.

Persons desiring additional information should contact Harriet O. Duleep, Project Director, (202) 376–8582. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Staff Director's office at least five (5) 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, July 17, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–17214 Filed 7–21–89; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Fishermen's Contingency Fund

Form Number: NOAA Forms 88–164 and 88–166; OMB–0648–0082

Type of Request: Request for extension of OMB approval of a currently cleared collection

Burden: 1,365 respondents; 13,650 reporting hours; average hours per response—10 hours—12,8 for 88–164—5 minutes for 88–166

Needs and Uses: Fishermen whose vessels or gear are damaged as a result of oil or gas activities on the Outer Continental Shelf can file claims for compensation. The information submitted establishes eligibility and the amount of compensation.

Affected Public: Individuals or households, small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Russell Scarato; 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 18, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–17229 Filed 7–21–89; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA)

Title: Commodity Classification and Information Requests

Form Number: Export Administration Regulations 770.11, 799.1; OMB No. 0694–0048

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 4,300 respondents; 2,150 reporting hours. Average time per respondent is one-half hour.

Needs and Uses: This reporting requirement is mandated by section 10(1) (1) and (2) of the Export Administration Act of 1979, as amended. It is required to aid exporters in determining the need for export licenses. It also aids in informing the exporter of requirements and restrictions in exporting or reexporting goods and technology.

Affected Public: Individuals, businesses or other for-profit institutions, non-profit institutions, small businesses or organizations

Frequency: On Occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Donald Arbuckle, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: July 18, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–17230 Filed 7–21–89; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Fishing Vessel and Gear Damage Compensation Fund
Form Number: NOAA Form 88-178; OMB—0648-0094
Type of Request: Request for extension of OMB approval of a currently cleared collection
Burden: 400 respondents; 8,000 reporting hours; average hours per response—20 hours
Needs and Uses: Fishermen whose vessels are damaged by foreign vessels, or whose gear is damaged by foreign or domestic vessels, can file claims for compensation under the Fisherman's Protective Act.
Affected Public: Individuals or households, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Russell Scarato, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 18, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-17231 Filed 7-21-89; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 11-89]

Proposed Foreign-Trade Zone—Homestead, Florida (Miami Port of Entry)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Vision Foreign-Trade Zone, Inc. (VFTZ), a Florida non-profit corporation and affiliate of Vision Council, Inc., requesting authority to establish a general-purpose foreign-trade zone in Homestead, Florida, adjacent to the Miami Customs port of entry. Vision Council, Inc., is a non-profit corporation made up of public and business officials concerned with economic development in South Dade County, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 14, 1989. VFTZ is authorized to make this application under Section 288.36 of the 1987 Florida Statutes Annotated.

The proposed zone would consist of 1,000 acres located between Southwest 152nd and 137th Avenues, and bordered to the south by Southwest 352 Street, within the Villages of Homestead, a planned industrial/residential community in Homestead, Florida, 24 miles southeast of Miami International Airport. The site is owned by Homestead Properties, a partnership which VFTZ has designated as operator of the proposed zone. The site in question was the subject of a previous action by the FTZ Board (Bd Order 184, 47 FR 10612, 3/11/82); however, the option to purchase the site under the earlier proposal lapsed before the site was activated. The previous grantee relinquished its authority upon applying for an expansion of the existing Miami FTZ (54 FR 28454, 7/6/89).

The application contains evidence of the need for zone services in the southern Dade County area, in addition to those provided by FTZ 32 in the Miami International Airport area, for large-scale warehousing/distribution, especially for those firms needing separate facilities. Specific manufacturing approvals are not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 909 SE. First Avenue, Miami, Florida 33131-2595; and Colonel Robert L. Herndon, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, Florida 32232-0019.

Comments concerning the proposed foreign-trade zone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 8, 1989.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Suite 224, Federal Building, 51 SW. First Avenue, Miami, Florida 33130

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 2835, Washington, DC 20230

Dated: July 18, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89-17276 Filed 7-21-89; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 12-89]

Proposed Foreign-Trade Zone—Clark County, Indiana Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indiana Port Commission (IPC), requesting authority to establish a general-purpose foreign-trade zone in Clark County, Indiana, within the Louisville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 17, 1989. The applicant is authorized to make this proposal under Indiana Code 8-10-3-2.

The proposed foreign-trade zone plan calls for a site at the Clark Maritime Center and at the Clark County Airport. The Maritime Center site covers 35 acres on Utica Pike at Port Road in Jeffersonville, Indiana. It is part of the 830-acre Clark Maritime Center Complex on the Ohio River, owned and operated by the IPC. The Airport site covers 22 acres on airport property between State Route 31 and the airport terminal area in Sellersburg, Indiana. The airport is owned and operated by the Clark County Airport Commission.

The application contains evidence of the need for zone services in the Clark County area. Several firms have

indicated an interest in using zone procedures for warehousing/distribution activity involving products such as machinery and robotics, chemicals, steel mill products, animal oils, battery parts, cable, and sports equipment. Specific manufacturing approvals are not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, 6th Floor, Plaza Nine Building, 55 Erieview Plaza, Cleveland, Ohio 44114; and Colonel David E. Peixotto, District Engineer, U.S. Engineer District Louisville, P.O. Box 59, Louisville, Kentucky 40201.

As part of its investigation, the examiners committee will hold a public hearing on September 13, 1989, beginning at 9:00 a.m., in the 4th Floor Conference Room of the City-County Building, 501 E. Court Avenue, Jeffersonville, Indiana.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by August 31. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through October 13, 1989.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, Room 636B, Gene Snyder Courthouse and Customhouse Building, 601 W. Broadway, Louisville, Kentucky 40202.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 2835, Washington, DC 20230.

Dated: July 18, 1989.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–17277 Filed 7–21–89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[CV–122–807]

Final Affirmative Countervailing Duty Determination: Fresh, Chilled, and Frozen Pork from Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters in Canada of fresh, chilled, and frozen pork, as described in the "Scope of Investigation" section of this notice. The estimated net subsidy is Can$0.08/kg. (Can$0.036/lb.) for all producers or exporters in Canada of fresh, chilled, and frozen pork and *de minimis* for all producers or exporters in Canada of fresh, chilled, and frozen sow and boar meat.

EFFECTIVE DATE: July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Kay Halpern or Rick Herring, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–0192 or 377–2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Canada of fresh, chilled, and frozen pork. For purposes of this investigation, the following programs are found to confer subsidies:

Federal Programs

- Tripartite Stabilization Programs under the Agricultural Stabilization Act.
- Feed Freight Assistance Program.
- Western Diversification Program.
- Western Transportation Industrial Development Program.

Federal/Provincial Program

- Canada/Quebec Subsidiary Agreement on Agri-Food Development.

Provincial Programs

- Alberta Crow Benefit Offset Program.
- Alberta Economic Development and Trade Act.
- Alberta Grant to Fletcher's Fine Foods.
- Ontario Farm Tax Rebate Program.
- Ontario Marketing Assistance Program for Pork Producers.
- Ontario (Northern) Livestock Improvement and Transportation Assistance Programs.
- Onterio Pork Industry Improvement Program.
- Quebec Farm Income Stabilization Insurance Program.
- Quebec Productivity Improvement and Consolidation of Livestock Production Program (Farm Building Subprogram).
- Quebec Regional Development Assistance Program (Livestock Transportation Subprogram).
- Saskatchewan Hog Assured Returns Programs.
- Saskatchewan Livestock Investment Tax Credit Program.
- Saskatchewan Livestock Facilities Tax Credit Program.

We determine the estimated net subsidy to be Can$0.08/kg. (Can$0.036/lb.) for all producers or exporters in Canada of fresh, chilled, and frozen pork and *de minimis* for all producers or exporters in Canada of fresh, chilled, and frozen sow and boar meat.

Case History

Since the last **Federal Register** publication pertaining to this investigation (*Preliminary Affirmative Countervailing Duty Determination: Fresh, Chilled, and Frozen Pork from Canada*, 54 FR 19582, May 8, 1989) (*Preliminary Determination*), the following events have occurred. Respondents submitted a supplemental response to our third supplemental/deficiency questionnaire on May 11, 1989. We conducted verification of the questionnaire responses of the Government of Canada and the provincial governments of Alberta, Manitoba, Ontario, Quebec and Saskatchewan in Canada from May 15 to June 1, 1989. Respondents submitted amended responses and additional clarifying information requested at verification on May 24, June 13, June 14, June 15, June 22 and June 30, 1989.

Both petitioner and respondents requested a public hearing in this investigation. Case briefs were filed by petitioner and respondents on June 23 and rebuttal briefs were filed on June 27, 1989. The hearing was held on June 28, 1989.

During the hearing, one party presented oral arguments which had not been included in a rebuttal brief. Under section 355.38(b) of the Commerce Department's regulations, published in the **Federal Register** on December 27, 1988 (to be codified at 19 CFR 355.38(b)),

during the hearing "an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief." For this reason, that party's rebuttal presentation has been stricken from the transcripts of the hearing. We wish to remind all interested parties that, in all hearings before the Department, we will strictly enforce the requirements of section 355.38(b).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the *Harmonized Tariff Schedule* (HTS), and all merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item number(s) and the appropriate HTS item number(s) with product descriptions for convenience and Customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by this investigation.

The products covered by this investigation are fresh, chilled, and frozen pork, currently provided for under TSUSA item numbers 106.4020 and 106.4040, and currently classifiable under HTS item numbers 0203.11.00, 0203.12.90, 0203.19.40, 0203.21.00, 0203.22.90, and 0203.29.40. Specifically excluded from this investigation are any processed or otherwise prepared or preserved pork products such as canned hams, cured bacon, sausage and ground pork.

Application of Section 771B

Section 1313 of the Omnibus Trade and Competitiveness Act of 1988 amended the Tariff Act of 1930 to include a new section 771B. This section reads as follows:

> In the case of an agricultural product processed from a raw agricultural product in which—
> (1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and
> (2) the processing operation adds only limited value to the raw commodity,
> subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.

The subject merchandise in this investigation is an agricultural product, fresh, chilled, and frozen pork, processed from a raw agricultural product, live swine. Therefore, in this investigation, we must analyze the elements of section 771B to determine whether the subsidies provided to producers or processors of live swine shall be deemed to be provided with respect to the manufacture, production, or exportation of fresh, chilled, and frozen pork. For the reasons discussed below, we determine that the elements of section 771B are met.

Prior to the enactment of section 771B, the Department considered a benefit to producers of a raw agricultural product as a benefit to producers of a processed agricultural product. See *Certain Fish from Canada: Final Countervailing Duty Determination* (43 FR 25996, June 16, 1978); *Lamb Meat from New Zealand: Preliminary Affirmative Countervailing Duty Determination* (46 FR 58128, November 30, 1981); *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada (Swine)* (50 FR 25098, June 15, 1985); *Final Affirmative Countervailing Duty Determination and Order: Lamb Meat from New Zealand (Lamb Meat 1985)* (50 FR 37708, September 17, 1985); *Preliminary Affirmative Countervailing Duty Determination: Red Raspberries from Canada* (50 FR 42574, October 21, 1985); *Final Affirmative Countervailing Duty Determination and Order: Rice from Thailand* (51 FR 12356, April 10, 1986); and *Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada (Groundfish)* (51 FR 10041, March 24, 1986). For example, in *Swine*, respondents argued that the Department should apply the upstream subsidy provision, section 771A of the Act, to determine if benefits to hog producers passed through to pork producers. We disagreed because we did not consider live swine to be an "input" into unprocessed pork. Instead, we considered benefits to hog producers as direct benefits to pork producers. Therefore, since we otherwise did not find reasonable grounds to believe or suspect that an upstream subsidy was being paid or bestowed with respect to unprocessed pork, we did not conduct an upstream subsidy investigation.

We clearly spelled out in *Swine* our reasons for determining that benefits to hog producers directly benefit pork producers. "We believe there are two characteristics which evidence that live swine should not be considered an 'input' into fresh, frozen, and chilled pork products. These characteristics are level of value added and the role of the producer." First, in our discussion of value added we said, "A low level of value added at a given level of processing is an indication that the prior stage product entering that level is not an input into the processed product." Second, in our discussion of the role of the processor and whether the processor merely makes the product ready for the next consumer we said, "The salient criterion is the degree to which the demand for the prior stage product is dependent on the demand for the latter stage product."

Respondents in *Swine* appealed the Department's decision not to apply the upstream subsidies provision. The Court of International Trade (CIT) remanded *Swine* to the Department of conduct an upstream subsidy investigation. The CIT ruled that Commerce had to apply the upstream subsidy provision because it found no exception to that provision for agricultural products either in the statute or in the legislative history. *See, Canadian Meat Council* v. *United States*, 661 F. Supp. 622 (1987). The decision of the CIT can only be considered advisory, however, because its later decision to uphold the ITC's negative injury determination regarding the domestic industry for pork products mooted its remand instructions. *See, National Pork Producers Council* v. *United States*, 661 F. Supp. 633 (1987). In light of the Court's decision, Congress amended the Act by adding section 771B to codify the Department's practice. 133 Cong. Rec. S8814–16 (daily ed. June 16, 1989).

In this investigation, we determine that the first criterion of section 771B is met because the demand for live swine depends substantially upon the demand for fresh, chilled, and frozen pork. Swine producers raise most swine for slaughter. Pork constitutes the primary product of the slaughtered pig. Thus, the demand for pork and for live swine are inextricably linked, a fact recognized by the provincial hog marketing boards, which actively promote the consumption of pork to increase the demand for live swine. The demand for live swine to be processed further, *e.g.*, into canned ham or sausage, still requires that the live swine first be processed as fresh, chilled, and frozen pork. In this regard, the demand for fresh, chilled, and frozen pork incorporates both the retail customer who demands fresh, chilled, and frozen pork for consumption and the wholesale customer who demands fresh, chilled, and frozen pork for further processing.

The second criterion of section 771B is also met in this investigation because

the processing operation used to manufacture fresh, chilled, and frozen pork adds limited value to the live swine. We verified that pork producers in Canada add, on average, approximately 20 percent in value to the live swine. This figure, however, encompasses various levels of processing that often go beyond the initial steps needed to first make a pig into pork. That is, to make the product under this investigation, the pork manufacturer immobilizes, kills, washes, dehairs, eviscerates, and splits the hog. After the pork producer weighs the carcass, he then removes the head and kidneys and trims air pockets or diseased portions. The split carcass now classifies as fresh, chilled, and frozen pork.

While a percentage figure for value added helps focus our evaluation of the second element of section 771B, it does not resolve the question of whether the processing operation adds only *limited* value to the raw commodity. The pork producers incur most of their cost in processing the live swine into split carcasses. The additional cost associated with processing the split carcass into primal or trimmed cuts is small relative to the price which these cuts receive in the market. For example, we verified that, in some cases, a flick of the knife transformed a primal cut into a more expensive, trimmed cut. As explained by the General Manager for the Canadian Meat Council, "It has made practical and economic sense for the industry to do this additional fat trimming at the plant level due to high returns for the fat credits and, in many cases, the fat is removed without additional labour." Thus, the figure of 20 percent value added to a degree corresponds to the higher profits earned in the marketplace by product presentation, and not the cost of processing the split carcass into primal or trimmed cuts. For these reasons, we find in this investigation that the processing operation adds only limited value to the raw commodity because the processing represented by the figure of 20 percent has not changed the essential character of the live swine.

Therefore, for the reasons set forth above, we determine that subsidies found to be provided to live swine shall be deemed to be provided with respect to the manufacture, production, or exportation of fresh, chilled, and frozen pork in accordance with section 771B of the Act.

Analysis of Programs

We streamlined this investigation because of the large number of programs involved, the large number of swine and pork producers in Canada, and the fact that we have previously examined most of the programs upon which we initiated, and decided to examine only swine and pork producers in the provinces of Quebec, Ontario, Alberta, Manitoba, and Saskatchewan. These five provinces accounted for 92.5 percent of hogs slaughtered in Canada in 1987, the most recent year for which such information is available.

We used our standard methodology to calculate benefits under grant programs. Grants provided on a recurring basis are expensed in the year of receipt. For non-recurring grants, we totalled the grants provided under each program and divided that amount by the total sales value of the subject merchandise from the five provinces examined for purposes of this investigation. If the sum was less than 0.5 percent of the sales concerned, we expensed such grants in the year of receipt. Since we have not received sales information for the years prior to the review period, we used as best information available the sales value for 1988, as reported in the response, to determine if grants received prior to 1988 should be allocated over time or expensed in the year of receipt. Based on this methodology, all grants were expensed in the year of receipt.

In both *Swine* and this investigation, we have used a conversion factor to calculate the percentage of pork yield from live swine. This percentage is then used in calculating the subsidy. Both respondents and petitioner have made suggestions as to the appropriate conversion factor. We have selected a conversion factor of 79.5 percent as verified for the review period.

We believe that 79.5 percent is the most appropriate conversion factor to use because the two largest countervailable programs in this investigation, the tripartite program and the Quebec Farm Income Stabilization Insurance Program, both use similar conversion factors. Of the conversion factors which have been proposed in this investigation, the factor of 79.5 percent most closely approximates the conversion factor used by the stabilization programs and the provincial marketing boards and packers in determining the final price to be paid for the live swine.

In the *Final Results of Countervailing Duty Administrative Review; Live Swine from Canada*, 54 Fed. Reg. 651 (1989) *(Live Swine Review)*, separate rates were calculated for market hogs and for sows and boars. Sows and boars were determined to be a distinct subclass of merchandise. Both respondents and petitioner have argued that a separate rate should be applied for sow and boar meat. In light of the practice established in the administrative review, and the arguments provided by respondents and petitioner, we have calculated a separate rate for sow and boar meat. For those programs where sows and boars are not eligible for benefits, we have allocated payments only to market hogs. For additional information on this issue, see Comment 11.

We discovered the Quebec Reimbursement of Municipal and Educational Taxes Program, which may provide different levels of tax rebates to farmers based on regional criteria, too late in the investigation to gather sufficient information to be used in this determination. If a final countervailing duty order is issued in this investigation, we will examine this program in any subsequent 751 review.

For purposes of this final determination, the period for which we are measuring subsidies ("the review period") is calendar year 1988.

Based upon our analysis of the petition, the responses to our questionnaire, verification, and written comments from respondents and petitioner, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to producers or exporters in Canada of fresh, chilled, and frozen pork under the following programs:

A. Federal Programs

1. *Tripartite Programs under the Agricultural Stabilization Act.* The Agricultural Stabilization Act (ASA) of 1958 was passed by the federal government to provide for the price stabilization of certain agricultural commodities. In 1975, the ASA was amended to revise the list of named commodities to cattle, hogs, sheep, industrial milk and cream, corn, soybeans, and oats and barley grown outside the Canadian Wheat Board designated areas. The support formula was update to a minimum of 90 percent of a five year average market price plus an index to reflect production cost changes.

In January 1985, the ASA was further amended by Bill C–25, which authorized the Minister of Agriculture, with the approval of the Governor in Council, to enter into tripartite agreements with the provinces and/or producers to provide price stabilization schemes for any natural or processed product of agriculture. The Minister may enter into a tripartite agreement only after he

determines that it will not give a financial advantage to some producers in the production or marketing of the product not enjoyed by other producers of the same product in Canada and that it will not provide an incentive to overproduce. The Bill also amended the Act by (1) changing "sheep" to "lamb and wool," (2) adding to the list of named commodities spring and winter wheat grown outside the Canadian Wheat Board designated areas, and (3) providing for different support periods with respect to different commodities (*e.g.* quarterly periods for livestock).

Tripartite agreements on hogs were signed effective January 1, 1986, with Alberta, Saskatchewan, Manitoba, and Ontario. An amended agreement was signed on February 8, 1989, adding the Provinces of British Columbia, Quebec, New Brunswick, Prince Edward Island, and Nova Scotia. Under the terms of the tripartite agreements on hogs, the provinces, with the exception of Quebec, may not offer separate stabilization plans or other *ad hoc* assistance for hogs, nor may the federal government offer compensation to hog producers in a province not a party to the agreement. The tripartite scheme provides for a five-year phase-in period to adjust for differences between the tripartite scheme and previously existing provincial programs. Existing provincial stabilization plans, with the exception of the Quebec Farm Income Stabilization Program, are to be completely phased out by 1991.

The tripartite agreements on hogs are administered by the Stabilization Committee ("Committee") in conjunction with the Agricultural Stabilization Board ("Board"). The Committee calculates the stabilization payments on a quarterly basis in the following manner. First, it calculates a "support price," which is equal to the cash costs of production in the current 13-week period plus 95 percent of the average margin in the same 13-week period for the preceding five years. The margin for any period is equal to the national average market price for the period minus the national average cash costs in that period. The difference between the support price and the average market price is the amount of stabilization payment. Stabilization payments are triggered in any 13-week period that the market price falls below the support price. Payments are made only on hogs indexing 80 or above, thereby automatically excluding sows and boars.

To date, tripartite ageements have been signed for the following commodities: hogs, cattle, cows/calves, lambs, sugar beets, apples, white pea beans and other dry edible beans, honey, and yellow seeded onions. We verified that producers of one commodity, asparagus, requested a tripartite agreement and were rejected. Producers of two other commodities, sour cherries and corn, have also requested agreements, but no agreements are being drawn up for these commodities.

Support payments under the tripartite agreements for various commodities are calculated in the manner described above, using a formula ranging from 85 to 95 percent of the average market price over the past five years plus an index to reflect production cost changes. We verified that the support level for beef and apples, both of which are covered under tripartite agreements, is 85 percent, as compared to the 95 percent used for hogs.

As federal and provincial payments to hog producers are now made pursuant to tripartite agreements, rather than as named commodities under the ASA, we must, as respondents have argued, focus on the tripartite program and consider whether it is, *de jure* or *de facto*, limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of section 771(5)(B) of the Act.

We typically consider three factors in determining whether a program is limited to a specific enterprise or industry or group of enterprises or industries: (1) The extent to which a foreign government acts (as demonstrated in the language of the relevant enacting legislation and implementing regulations) to limit the availability of a program; (2) the number of enterprises, industries, or groups thereof that actually use a program, which may include the examination of disproportionate or dominant users; and (3) the extent, and manner in which, the government exercises discretion in making the program available.

Pursuant to the first factor, we verified that there is no *de jure* limitation as to which commodities may be covered under tripartite agreements. Thus, we find that the federal government did not act to limit the availability of the tripartite program.

Pursuant to the second factor, by its terms, the ASA, as amended, provides that any agricultural product may be covered under a tripartite agreement. However, since the January 1985 amendment authorizing tripartite agreements, only nine out of an innumerable number of agricultural commodities have been incorporated under such agreements. Furthermore, not all producers who request tripartite agreements for their commodities obtain such agreements. For example, agreements for sour cherries and corn have not been drawn up because of "administrative difficulties" involving the valuation of land and other factors, despite the fact that an agreement already exists for apples, a commodity with similar valuation problems. Asparagus growers were rejected because government officials deemed there was little need for an asparagus agreement due to the rising price of asparagus and the relatively small value of asparagus sales.

Pursuant to the third factor, we found that discretion in the administration of the tripartite program, which results in different treatment for different commodities, is exercised in the following ways. First, there are no explicit or standard criteria for evaluating tripartite agreement requests. Neither the ASA, as amended, nor the regulations and guidelines concerning tripartite agreements, establish procedures or criteria for when a commodity is to become subject to a tripartite agreement. In practice, it is ultimately at the Ministry's discretion whether to implement a request for a tripartite agreement (see Comment 7).

Second, we verified that the level of price stabilization and the terms of each scheme varies, at the discretion of the government, from commodity to commodity. For parity of benefits among the producers of different commodities to exist, it is essential that the cost of production elements in the stabilization formulas for various commodities be comparable to one another. That is, the cost of production model used for the swine program should reflect the actual cost of production experience of swine producers to the same extent that the model for other commodities reflects the actual cost of production experience of producers of those commodities. At verification, we learned that cost of production models do not necessarily reflect the experience of the relevant producer group.

Furthermore, the support level has varied historically for the same product and is ofter different for different commodities. For example, the support level for hogs was raised from 93 percent to 95 percent in an effort to get Quebec to sign a tripartite agreement on hogs. Moreover, as noted above, the suport level for apples and beef is only 85 percent., We were told during verification that the Committee worked with different support models for these commodities, and that a model was originally devised for beef in which the

support level would be 50 percent. However, due to opposition to that support level, it was raised to the present level but elements in the cash cost component of the model were dropped. Thus, the incomes of producers of certain covered commodities are being stabilized to a significantly greater or lesser extent than those of others for no objective reasons.

Even among swine producers, benefits are not available on equal terms. Indeed, it appears that, by allowing Quebec to keep its provincial hog stabilization program, the Ministry is undermining the general guidelines of the tripartite program by giving an advantage to some producers in the production of hogs not enjoyed by other producers of the same product in Canada.

For the foregoing reasons, we determine the tripartite program to be limited to a group of enterprises or industries, and therefore countervailable.

To calculate the benefit under this program, we first calculated the dressed-weight equivalent of hogs marketed during the review period in the five provinces examined for purposes of this investigation (less sows and boars). To obtain the dressed-weight equivalent, we used the live-weight to dressed-weight conversion factor of 79.5 percent as verified for the review period. Since the stabilization payments are disbursed from a pool of funds made up of equal contributions from the federal government, provincial governments, and producer premiums, plus interest, we multiplied the stabilization payments which we verified were made to hog producers during the review period by two-thirds to factor out the producer premiums. We then allocated the result over the dressed-weight equivalent of hogs marketed in the five provinces during the review period (less sows and boars) to obtain an estimated net subsidy of Can$0.027486/kg. (Can$0.012468/lb.) for fresh, chilled, and frozen pork. Because sows and boars are ineligible for benefits under this program, we determine the benefit to be zero for sow and boar meat.

2. *Feed Freight Assistance Program.* The Feed Freight Assistance Program was administered by Agriculture Canada until 1967, when the Livestock Feed Act (LFA) was passed and the Livestock Feed Board was formed to administer the program. Parliament enacted the LFA in response to domestic feed grain supply problems and price fluctuations in eastern Canada and British Columbia. The Board ensures the availability of feed grain to meet the needs of livestock feeders, the availability of adequate storage space in eastern Canada for feed grain, and price stability for feed grain in eastern Canada, British Columbia, the Yukon, and the Northwest Territories. Only users of feed grain, *i.e.*, those who buy it to feed livestock (commercial mills and livestock producers), are eligible for assistance.

Eligibility for the program is restricted to feed grain millers in "designated areas" (Manitoba, Saskatchewan, Alberta and parts of British Columbia) whose grain is fed to livestock, and to livestock owners in parts of eastern Canada and British Columbia, and in the Yukon Territory and the Northwest Territories.

To qualify for assistance, the feed grain must be transported outside the farm where it is grown and moved through commercial channels. Commercial channels are defined as transactions that provide an invoice, weight certificate, grade certificate, and bill of lading. Payments are made only on grain that will be fed to livestock.

Benefits are provided for transporting and storing feed. Payments for feed grain transportation are set per ton according to the destination of the grain. Feed grain storage payments are made on a product-specific basis.

Because this program is limited to feed grain millers in the above described "designated areas" whose grain is fed to livestock, and to livestock owners in parts of eastern Canada and British Columbia, and in the Yukon Territory and the Northwest Territories, we, determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

Of the five provinces we are examining for purposes of this investigation, livestock owners in only Ontario and Quebec are eligible for assistance under the program. We found that no benefits were provided to hog producers in Ontario. Therefore, we are only considering the assistance provided to Quebec producers. We verified that 2.7 percent of all payments under this program went to livestock owners in Quebec. At verification we found that 50 percent of feed grains were consumed by hogs. Therefore, to calculate the benefit to hog producers, we used 1.35 percent (50 percent of 2.7 percent) of total payments as the benefit to hog producers. We divided this total by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to obtain an estimated net subsidy of Can$0.000034/kg. (Can$0.000016/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

3. *Western Diversification Program.* The Western Diversification Program was established by the federal government in August 1987 to diversify the economic base of western Canada (British Columbia, Alberta, Saskatchewan and Manitoba). The program was established as a five-year program with a $1.2 billion diversification fund. Assistance is provided in the form of "contributions," either repayable or non-repayable. The amount of funding provided, as well as the terms and conditions attached to it, are determined on a project-by-project basis. The federal government funds the program; provincial governments do not. Interest is rarely charged on repayable assistance. Eligible projects include new product development, plant establishment, new market development, industry-wide productivity improvement, feasibility studies or new technology. Upon approval of a project, an offer of financial assistance is made. Contributions are disbursed quarterly, usually after the project is completed.

Because this program is limited to western Canada, we determine that it is limited to enterprises or industries located in a specific region of Canada, and is therefore, countervailable. We verified that, of the projects approved to date, only one provided benefits on the production of hogs or the processing of pork during the review period.

To calculate the benefit, since we do not have the calendar year 1988 figures, we used as best information available the non-repayable contribution disbursed to the one hog/pork-related project during fiscal year 1988–1989 and divided it by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to obtain an estimated net subsidy of Can$0.000105/kg. (Can$0.000048/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

4. *Western Transportation Industrial Development Program.* Under this program, assistance was provided by the federal government to manufacturing, processing and related service industries in Manitoba, Saskatchewan, Alberta and British Columbia. This program expired in June 1988 and was incorporated into the Western Diversification Program.

Because this program is limited to firms in the four provinces of western Canada, we determine that it is limited to enterprises or industries located in a specific region of Canada, and is therefore countervailable.

To calculate the benefit under this program, we divided the grants attributable to pork production during

the review period by the dressed-weight equivalent of hogs marketed during the review period in the five provinces to yield an estimated net subsidy of Can$0.000054/kg. (Can$0.000025/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

B. Federal Provincial Program

1. *Canada/Quebec Subsidiary Agreement on Agri-Food Development*: The Subsidiary Agreement on Agri-Food Development is pursuant to an Economic and Regional Development Agreement (ERDA) between the Government of Canada and the Province of Quebec. Programs funded under the Subsidiary Agreement include the following:

Program 1: Research and Development; A. Contract Research; B. Food Research

Program 2: Technological Innovations and New Initiatives; A. Agricultural Production; B. Conservation, Processing and Marketing

Program 3: Soil Conservation and Improvement; A. Inventory of Soil Degradation Problems; B. Soil and Water Conservation Research; C. Technology Transfer in Soil and Water Conservation

Funding for each program and subprogram for the duration of the Subsidiary Agreement is estimated at Can$35 million, and is split evenly between the federal and provincial governments.

Of the seven subprograms available, we verified that only three, 1.A., 2.A. and 3.B., include hog-related projects. Of these projects, those under subprogram 1.A. were contracted with universities or research institutions, and the one under subprogram 3.B. was contracted with a consulting firm. We verified that the projects under these two subprograms included provisions for making the research results publicly available. (See Section II of the notice, *Programs Determined to be Not Countervailable*, concerning subprograms 1.A. and 3.B.) The hog-related projects under subprogram 2.A. were contracted with private individuals or farmers, and do not involve research.

Because projects under subprogram 2.A. are limited to Quebec, we determine that the federal government's contribution is limited to enterprises or industries located in a specific region of Canada and is therefore countervailable. Because we verified that projects in subprogram 2.A. involve a large number and a wide variety of agricultural products, we determine that the provincial government's contribution is not limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore not countervailable.

To calculate the benefit, we summed the grants provided to hog-related projects under subprogram 2.A. during the review period and multiplied this sum by one-half to factor out the Government of Quebec contribution. We divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000019/kg. (Can$0.000009/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

C. Provincial Programs

1. *Alberta Crow Benefit Offset Program.* The purpose of this program, which is administered by Agriculture Alberta, is to eliminate market distortions in feed grain prices created by the federal government's policy on grain transportation.

Assistance is provided on feed grain produced in Alberta, feed grain produced outside Alberta but sold in Alberta, and feed grain produced in Alberta to be fed to livestock on the same farm. The government provides certificates to registered feed grain users and registered feed grain merchants, which can be used as partial payments for grains purchased from grain producers. Feed grain producers who feed their own grain to their own livestock submit a claim directly to the government for payment.

Hog producers receive benefits in one of three ways. Hog producers who do not grow any of their own feed grain receive certificates which are used to cover part of the cost of purchasing grain. Hog producers who grow all of their own grain submit a claim to the Government of Alberta for direct payment. Finally, hog producers who grow part of their own grain but who also purchase grain receive both certificates and direct payments.

Because this program is limited to feed grain users, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore, countervailable.

Since we do not have precise data on hog consumption of feed grain, as best information available, we are using data published in *Agriculture in Alberta*, which states that hogs consumed 15 percent of the province's barley production and that barley is the primary grain fed to hogs. Therefore, to calculate the benefit, we allocated 15 percent of the total amount of benefits to feed grain users in Alberta over the dressed-weight equivalent of hogs marketed during the review period in the five provinces. On this basis, we calculated an estimated net subsidy of Can$0.003228/kg. (Can$0.001464/lb.) for fresh, chilled, and frozen pork, and for sow and boar meat.

2. *Alberta Department of Economic Development and Trade Act.* The purpose of this program is to foster economic development in the province. Assistance may be provided in the form of grants, loans, or loan guarantees. However, only loans and loan guarantees have been provided under the program. Loans and loan guarantees are only provided to firms which cannot receive financing or equivalent financing from commercial sources. Two pork producers in Alberta have received benefits under this program. Gainers Inc. has received both a loan and a loan guarantee from the province under this program, and Fletcher's Fine Foods has received a loan guarantee.

In order to determine whether a domestic program confers a countervailable subsidy, we must determine whether the benefits provided under the program are limited to a specific enterprise or industry, or group of enterprises or industries, in accordance with section 771(5)(B) of the Act. We typically consider three factors when making this determination: (1) The extent to which a foreign government acts (as demonstrated in the language of the relevant enacting legislation and implementing regulations) to limit the availability of a program; (2) the number of enterprises, industries, or groups thereof that actually use a program, which may include the examination of disproportionate or dominant users; and (3) the extent, and manner in which, the government exercises discretion in making the program available. (See, *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod from Malaysia (Wire Rod)*, 53 FR 13303, April 22, 1988, and the DOC Position to Comment 7.)

During verification, we found no standard criteria for either the approval or rejection of applicants under this program. We were unable to review applications of successful and rejected companies under this program. We were also unable to determine why certain companies were approved for either a loan or a loan guarantee, including both pork packers under investigation in Alberta. Provincial officials were unable to provide us with a list of rejected companies. They were also unable to determine the number of companies that have applied for benefits under this program. In addition, we noted that

there was no formal or standard application process.

Since we were unable to review the documents necessary to make an adequate evaluation of two of the three factors cited above, as best information available, we determine that the program is limited to a specific enterprise or industry, or group of enterprises or industries. In making this determination, we note that, of the amount of loans granted under this program from its inception in 1986 through March 1989, approximately 75 percent went to Gainers. Also, in any given year there were only a limited number of loan guarantees provided.

We determine this program to be countervailable because the terms of the loan and loan guarantees are inconsistent with commercial considerations. During the review period, two loan guarantees and one loan were provided to pork packers. In considering the guaranteed loans, we assumed that the packers would not have received loans at the interest rates provided without these guarantees because this program is available only to companies that could not otherwise receive financing. In addition, we found that loan guarantees are not provided as a normal banking practice in Alberta.

One loan guarantee was used to obtain a short-term interim loan. Therefore, to calculate the benefit from this loan, we used our standard short-term loan methodology, comparing the interest rate on this guaranteed loan to a benchmark rate for non-guaranteed loans. No guarantee fee was paid on this loan during the review period; therefore, we did not deduct a guarantee fee from the net benefit.

The other loan guarantee was used to obtain a long-term loan, and we therefore used our standard long-term loan methodology. We used as our benchmark the average long-term corporate bond rate during the review period. To that, we added our standard risk premium to reflect the fact that this program is available only to uncreditworthy companies. We considered as the principal of this loan only the amount attributable to pork operations. Because the firm paid part of the guarantee fee during the review period, we subtracted that portion of the fee attributable to the loan for pork operations from the net benefit.

We followed the same methodology for the one loan provided under this program without a guarantee, except that no guarantee fee was subtracted from the benefit.

We then totalled the net benefits from this program and divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to yield an estimated net subsidy of Can$0.000018/kg. (Can$0.000008/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

3. *Alberta Grant to Fletcher's Fine Foods.* During verification we found that Fletcher's Fine Foods had received a grant from the province of Alberta. Company officials stated that the grant was received prior to the review period, but no supporting documentation was provided. They were unable to tell us under which program this grant was provided.

The grant from the province of Alberta is limited specifically to Fletcher's, and is therefore countervailable. Because we were unable to verify that this grant was provided prior to the review period, as best information available, we are attributing the full amount of the grant to the review period. We divided this grant by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to yield an estimated net subsidy of Can$0.000066/kg. (Can$0.000030/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

4. *Ontario Farm Tax Rebate Program.* The Ontario Farm Tax Rebate Program replaced the Ontario Farm Tax Reduction Program. While the Ontario Farm Tax Reduction Program provided a rebate of 60 percent of total property taxes levied on eligible farm properties, the current program provides a rebate of 100 percent of taxes levied on outbuildings and properties only. Taxes levied on the residence and one acre of land are no longer rebated.

Any resident of Ontario may receive a rebate if he or she owns and pays taxes on eligible properties. Eligible properties are farming enterprises that produce farm products with a gross value of at least Can$8,000 in southern and western Ontario and Can$5,000 in northern and eastern Ontario. We determine that this program is limited to enterprises or industries located in a specific region within the province, and is thus countervailable. However, since all farmers in Ontario whose gross output is at least Can$8,000 are eligible to receive a rebate under this program, the program is countervailable only to the extent that farmers in northern and eastern Ontario whose gross output is between Can$5,000–8,000 receive benefits.

Based on data taken from the *1986 Census of Agriculture, Statistics Canada,* the last year for which complete information is available, the Government of Ontario estimated that 4.7 percent of all Ontario swine farmers have sales valued within the Can$5,000–8,000 range. To calculate the benefit, we therefore multiplied the total amount paid to swine producers in eastern and northern Ontario during the review period by 4.7 percent. We divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000020/kg. (Can$0.000009/lb.) for both fresh, chilled, and frozen pork and for sow and boar meat.

5. *Ontario (Northern) Livestock Improvement and Transportation Assistance Programs.* The purpose of these programs is to assist livestock producers in northern Ontario by reducing their relatively high costs of maintaining and improving herd quality. Livestock producers in northern Ontario are reimbursed up to 20 percent of the cost of purchasing breeding stock and 50 percent of the transportation cost associated with the purchase of such breeding stock.

Because these programs are limited to livestock producers in northern Ontario, we determine that they are limited to a specific enterprise or industry, or group of enterprises or industries, and therefore countervailable.

To calculate the benefit to swine producers, we allocated the reimbursements made to swine producers during the review period over the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of less than Can$0.000001 in either kilograms or pounds for fresh, chilled, and frozen pork and for sow and boar meat.

6. *Ontario Pork Industry Improvement Plan (OPIIP).* The purpose of this program is to foster excellence in farm business management and the adoption of improved production technologies. Assistance is provided under a number of subprograms. To be eligible for any of the subprograms, a producer must have at least 20 sow equivalents (one sow equivalent is equal to one sow or 15 market-weight hogs marketed annually) and must submit the required production records.

Grants are provided to hog producers under the following subprograms: Swine Production Analysis, Enterprise Analysis, Swine Ventilation, Productivity and Quality Improvement, Artificial Insemination, Rodent Control, Private Veterinary Herd Health, Education, Feed Analysis and Herd Health Improvement.

In addition to the above subprograms, there are three other subprograms under OPIIP. One provides grants to the

Ontario Swine Artificial Insemination Association, a farmer cooperative organized for the purpose of developing swine semen production facilities. This Association is the only licensed producer of swine semen in the province. The other two subprograms provide grants to support (1) research projects related to swine production and (2) local chapters of the Ontario Pork Producers' Marketing Board. (For additional information on these last two subprograms, see Section II of the notice, *Programs Determined to be Not Countervailable.*)

Because the OPIIP provides grants under the remaining subprograms only to swine producers, we determine that these remaining subprograms are limited to a specific enterprise or industry, or group of enterprises or industries, and are therefore, countervailable.

To calculate the benefit, we summed the grants provided under these subprograms during the review period and divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.002324/kg. (Can$0.001054/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

7. *Ontario Marketing Assistance Program for Pork (MAPP).* This program, instituted in 1986, assists Ontario port processors in their efforts to improve domestic market prospects for pork sales and to sustain and enhance their ability to compete in global pork markets. Pork processors receive grants of 25 percent of the total cost of plant upgrading, new technology adoption or new product development.

Because this program provides grants to only pork processors, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore, countervailable.

A consumer survey was also financed under MAPP. For additional information on that project, see Section II of this notice, *Programs Determined to Be Not Countervailable.* In addition, there was an export promotion subprogram which was not used during the review period.

To calculate the benefit, we summed the grants provided under this program during the review period and divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000613/kg. (Can$0.000278/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

8. *Quebec Farm Income Stabilization Insurance Program.* This program was started in 1976 to guarantee a net annual income to participating producers. It is administered by the Regie des Assurances Agricoles du Quebec (the Regie). The program covers calves, feeder cattle, potatoes, piglets, feeder hogs, corn, oats, wheat, barley, heavy veal, and sheep. There are no established criteria and no authorization for designating additional commodities to be covered. To be eligible for the piglet or feeder hog programs, a producer must own the hogs or sows he insures, be personally involved in raising the hogs or piglets, own at least 300 insurable hogs or 15 insurable sows, and enroll in the scheme for at least five years. The coverage year runs from April 1 to March 31, for the feeder hog program, and runs from July 1 to June 30 for the piglet program.

The support level is calculated according to a cost of production model that includes an adjustment for the difference between the average wage of farm workers and the average wage of all other workers in Quebec. Payments to growers are calculated on a yearly basis and are made at the end of the coverage year. The program is funded two-thirds by the provincial government and one-third by producer assessments. Producer and government contributions are made once a year and are kept in one account from which all disbursements are made. Pursuant to an amendment of July 13, 1988, producer assessments and the stabilized net annual income are set according to the size of production, effective in the 1988–89 coverage years. Payments received from another source, *e.g.*, under a tripartite agreement, are deducted from any stabilization payments made by the Regie.

Since several major agricultural commodities, such as eggs, dairy products, and poultry, are not covered under this program, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

We calculated the benefit by multiplying the total amount of stabilization payments made under the piglet and feeder hog programs during the review period by two-thirds to factor out producer assessments. We then divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period (less sows and boars) to obtain an estimated net subsidy of Can$0.043170/kg. (Can$0.019582/lb.) for fresh, chilled and frozen pork. Because sows and boars slaughtered for meat are ineligible for benefits under this program, we determine the benefit to be zero for sow and boar meat.

9. *Quebec Productivity Improvement and Consolidation of Livestock Production Program (Farm Building Improvements Subprogram).* This program was started in 1987 and is designed to aid small producers. It is divided into eight subprograms. Swine growers are only eligible for one subprogram, the Farm Building Improvements Subprogram. With regard to hogs, this subprogram provides grants to consolidate production so that the process from farrowing to finishing takes place on the same farm. The grants cover up to 30 percent of the actual cost of the conversion.

To be eligible for assistance, applicants must be recognized farm producers according to the Farm Producer's Act and be registered with the Bureau de Renseignements Agricoles. Producers operating farrowing facilities must maintain between 40 and 80 sows, and finishing farms must maintain between 500 and 1,000 hogs. The maximum assistance is Can$200 per sow and Can$25 per hog, with a maximum of Can$15,000 per farm operation for the duration of the program.

Because this subprogram is limited to livestock producers, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

To calculate the benefit, we summed the grants provided under this program during the review period and divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000010/kg. (Can$0.000005/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

10. *Quebec Regional Development Assistance Program (Livestock Transportation Subprogram).* This program was started in 1987 to promote regional development in Quebec. The program consists of four subprograms, only one of which, the Livestock Transportation Subprogram, is available to hog producers. This subprogram provides financial assistance to eligible producers for transporting animals to a government inspected slaughterhouse. Quebec is divided into twelve agricultural regions, only five of which (three full regions and parts of two others) are eligible for aid under the subprogram. These five regions are divided into seven zones based on the distance from the Montreal-Quebec triangle, where most of the slaughterhouses are located. The assistance offered varies according to

the zone in which the applicant's operation is located.

Because this subprogram is limited to livestock producers in specific regions of Quebec, we determine that it is limited to a specific group of enterprises or industries located in a specific region within the province, and is therefore countervailable.

To calculate the benefit, we divided the amount of payments made to hog producers during the review period by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000025/kg. (Can$0.000011/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

11. *Saskatchewan Hog Assured Returns Program (SHARP).* SHARP was established in 1976 pursuant to the Saskatchewan Agricultural Returns Stabilization Act. SHARP provides stabilization payments to Saskatchewan hog producers when market returns fall below a designated "floor price." The program is administered by the Saskatchewan Pork Producers' Marketing Board on behalf of the provincial Department of Agriculture. Under the Saskatchewan Agricultural Returns Act, the provincial government may establish a stabilization plan for any agricultural commodity. However, in practice, only hogs and cattle have such plans.

To be eligible, a producer must own market hogs raised and finished to slaughter weight on the production unit or purchased as weanlings or feeder hogs and fed a minimum of 60 days. Coverage is limited to 1,500 hogs per producer per quarter.

The program is funded by producer premiums and matching funds from the provincial government. When Saskatchewan joined the tripartite agreement on hogs effective January 1, 1986, SHARP payments were reduced by the amount of payments received through the tripartite program. No producers have been eligible to join SHARP since December 31, 1985. SHARP payments are being phased out and will be terminated by March 31, 1991.

Stabilization payments are based on the sum of the producer's cash costs plus 75 percent of the sum of non-cash costs for each quarter. Payments are made approximately four weeks after the end of each quarter. Unlike the tripartite program, under which all producers of a commodity receive the same payment per unit of that commodity, each producer under SHARP is paid the difference between his average market price and the support price.

Although the Saskatchewan Agricultural Returns Act allows the provincial government to establish stabilization plans for any agricultural commodity, in practice, only hog and cattle producers have such plans. Because stabilization payments under this program are limited to only hogs and cattle, we determine that the program is limited to a specific group of enterprises or industries, and therefore countervailable.

To calculate the benefit, we multiplied the total amount of stabilization payments made to hog producers during the review period by one-half to factor out producer premiums. We then divided the result by the dressed-weight equivalent of hogs marketed in the five provinces during the review period (less sows and boars) to obtain an estimated net subsidy of Can$0.001408/kg. (Can$0.000639/lb.) for fresh, chilled, and frozen pork. The estimated net subsidy is zero for sow and boar meat because sows and boars are ineligible for benefits under this program.

12. *Saskatchewan Livestock Investment Tax Credit Program.* The Saskatchewan Livestock Investment Tax Credit Program was introduced in March 1984, under the Saskatchewan Livestock Investment Tax Credit Act. The program is administered by the Economics Branch of Saskatchewan Agriculture. It provides incentives for the finishing of livestock in Saskatchewan. The program provides a tax credit on a per head basis for feeder cattle, hogs and lambs sold for slaughter. Dairy cows, hogs and lambs used for breeding purposes do not qualify for assistance. Poultry is also not eligible for tax credit under this program.

To be eligible for a tax credit, hogs must index 80 or above and be owned by a resident of Saskatchewan for at least 60 days. (This qualification automatically excludes sows and boars.) There is a credit of $3.00 per hog and a $100 deductible per claimant per year. Any unused portion of the tax credit can be carried forward for seven years and applied to provincial tax payable.

Because this program is limited to livestock producers, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

To calculate the benefit, we divided the tax credits net of deductibles claimed by swine producers during the review period by the dressed-weight equivalent of hogs marketed in the five provinces during the review period (less sows and boars) to obtain an estimated net subsidy of Can$0.000721/kg. (Can$0.000327/lb.) for fresh, chilled, and frozen pork. The estimated net benefit is zero for sow and boar meat because sows and boars are ineligible for benefits under this program.

13. *Saskatchewan Livestock Facilities Tax Credit Program.* This program, implemented on January 1, 1986, provides tax credits to livestock producers for investment in livestock production facilities. The credit may only be used to offset provincial taxes and applications for tax credits must be received by Saskatchewan Agriculture no later than six months after the project is completed.

Unlike the Investment Tax Credit Program, livestock covered under this program can be raised for either breeding or slaughter. Eligible livestock include cattle, horses, sheep, swine, goats, poultry, bees, fur-bearing animals raised in captivity, or any other designated animals. Investments covered under the program include new buildings, improvements to existing livestock facilities and any stationary equipment related to livestock facilities.

The program pays 15 percent of 95 percent of project costs, or 14.25 percent of total costs, in order not to overlap the Business Investment Tax Credit Program, a federal program. As with the Livestock Investment Tax Credit Program, participants may carry forward any unused credit for up to seven years.

Because this program is limited to livestock producers, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

To calculate the benefit, we divided the total tax credits claimed by hog producers by the dressed-weight equivalent of hogs marketed in the five provinces during the review period to obtain an estimated net subsidy of Can$0.000355/kg. (Can$0.000161/lb.) for fresh, chilled, and frozen pork and for sow and boar meat.

II. Programs Determined To Be Not Countervailable

1. *Special Canada Grains Program.* The Special Canada Grains Program 1987 Extension provides grants to grain, oilseed, special crop and honey producers who have experienced dramatic drops in income due to international agricultural policies. To be eligible, farmers must have seeded acreage in Canada of eligible crops harvested in 1987 or have seeded acreage which was cut for silage, greenfeed, ploughed down, or left for summerfallow due to a natural disaster.

Eligible crops include wheat, oats, barley, mixed grains, rye, corn, and high moisture grains which are intended to be harvested as grains or fed to livestock.

Because this program is based on seeded acreage of eligible crops, we determine that it does not provide a countervailable benefit with respect to the production or exportation of pork. To determine whether this program provides a benefit to hog producers, it would be necessary to conduct an upstream subsidy investigation. However, petitioner did not make a sufficient upstream subsidy allegation, and we therefore did not undertake such an investigation.

This program is distinguished from the Feed Freight Assistance Program (FFA), which we did find countervailable. Under the FFA, the benefit was provided directly to the hog producer for the purpose of purchasing feed. Under the Special Canada Grains Program, payment is made to a grain farmer based on his grain production.

2. *Research Projects under the Canada/Quebec Subsidiary Agreement on Agri-Food Development.* At verification, we examined three subprograms under the Subsidiary Agreement, 1.A., 2.A. and 3.B., which include hog-related projects. Of these projects, those under subprogram 1.A. were contracted with universities or research institutions, and those under 3.B. were contracted with a consulting firm. We verified that the research results of projects under these two subprograms are made available to the public, including producers of fresh, chilled, and frozen pork in the United States. Therefore, we determine that projects under subprograms 1.A. and 3.B. are not limited to a specific enterprise or industry, or group of enterprises or industries, and are thus not countervailable. Subprogram 2.A. is discussed under Section I of the notice, *Programs Determined to be Countervailable.*

3. *Research Projects under the Canada/Saskatchewan Agricultural Development Subsidiary Agreement.* Under the Canada/Saskatchewan Agricultural Development Subsidiary Agreement, pursuant to the ERDA between the federal government and the Province of Saskatchewan, a variety of research projects are funded. These projects involve crops, livestock, soil, irrigation, and human resources. The livestock projects include a number of hog/pork-related projects, including the Swine Herd Technology Transfer Program. Some projects are 100 percent funded by the federal government, while others are 100 percent funded by the provincial government. In the end, however, dollar amounts for all projects work out to be split 50/50 between federal/provincial financing.

We verified that the research results of projects related to hogs or pork funded under the Subsidiary Agreement are made available to the public, including producers of fresh, chilled, and frozen pork in the United States. Therefore, we determine that projects under the Subsidiary Agreement are not limited to a specific enterprise or industry, or group of enterprises or industries, and are thus not countervailable.

4. *Alberta Processed Food Market Expansion Program.* This program promoted consumer awareness of Alberta products throughout the province. The promotion was for all agricultural products produced in Alberta. Because this promotion is designed to increase domestic awareness, and therefore is tied to the sale of products to a market other than the United States, we determine that it does not provide a countervailable benefit to the production or exportation of fresh, chilled, and frozen pork.

5. *Alberta Food Processors' Promotion Assistance Program.* This program replaced the Processed Food Market Expansion Program. The objective of the program is to promote Alberta agricultural products within Alberta. Because this promotion is designed to increase domestic awareness, and therefore is tied to the sale of products to a market other than the United States, we determine that it does not provide a countervailable benefit to the production or exportation of fresh, chilled, and frozen pork.

6. *MAPP Consumer Survey.* The Ontario Ministry of Agriculture and Food commissioned a survey on U.S. consumer attitudes toward pork. The cost of the survey was Can$250,000 and was financed under MAPP. The results of the survey are publicly available both inside and outside of Canada. Therefore, we determine that the benefits from this project are not limited to a specific enterprise or industry, or group of enterprises or industries, and are thus not countervailable.

7. *Research Grants under the OPIIP.* Research grants under OPIIP are provided to support research projects related to swine production. We verified that the results of such research are publicly available both inside and outside Canada. Therefore, we determine that the benefits of such research grants are not limited to a specific enterprise or industry, or group of enterprises or industries, and are thus not countervailable.

8. *Education Grants to the Ontario Pork Producers' Marketing Board under the OPIIP.* Grants are given to local chapters of the Marketing Board to help defray the costs of general agricultural education programs. The amount of the grants is determined by the membership of the organization. Because these grants are paid to the marketing boards for agricultural education programs, we determine that there is no countervailable benefit to the production or exportation of pork.

9. *Grants to the Pork Producers' Marketing Boards.* During verification we found that some marketing boards had received funds from the provincial governments to defray the cost of pork promotion campaigns. Because these promotions were designed to increase domestic consumption, and therefore were tied to the sale of products to a market other than the United States, we determine that they do not provide a countervailable benefit to the production or exportation of fresh, chilled, and frozen pork.

III. Programs Determined Not To Be Used

We determine that the following programs were not used by producers or exporters in Canada of fresh, chilled, and frozen pork during the review period:

1. *Export Expansion Fund.* This fund covers the costs of federal government travel to foreign countries for trade consultations or technical seminars. The fund also brings foreign officials to Canada. No funds were used to finance travel related to the exportation of pork to the United States during the review period.

2. *Canada/Alberta Subsidiary Agreement on Agricultural Processing and Marketing.* This subsidiary agreement operates under the ERDA between the Government of Alberta and the Government of Canada, which became effective June 8, 1984. The agreement is jointly funded and administered by the federal and the provincial government. The purpose of the agreement is to enhance the agricultural processing sector of Alberta's economy.

Applicants who carry out approved projects within the agricultural processing sector receive non-repayable contributions toward eligible costs incurred. Eligible projects include the establishment, expansion, and modernization of processing operations and testing and research facilities, as well as feasibility studies and product research and development.

We verified that no assistance was provided to federally-inspected pork producers (the only pork producers eligible to export) during the review period.

3. *Canada/Alberta Livestock Drought Assistance Program.* This program provided relief to livestock producers in certain areas affected by drought. The program was jointly funded by the provincial and federal governments. Eligible livestock included beef cattle, dairy cattle, bison, sheep, goats and horses. Hog producers were not eligible for benefits under this program.

4. *Alberta Livestock Assistance Program.* This program provided assistance to livestock producers living in areas not covered by the joint federal-provincial drought program. Livestock eligible for this program were the same as for the joint program. Hog producers were not eligible for assistance under this program.

5. *Alberta Red Meat Stabilization Program.* This interim program provided assistance to livestock producers before the tripartite agreements were signed. We verified that no assistance was provided to hog or pork producers during the review period, as all payments were made during 1985.

6. *Alberta Grants to Pork Producers.* The province of Alberta agreed to provide funds to two pork producers in the province under the same terms and conditions as the Canada Alberta Subsidiary Agreement on Agricultural Processing and Marketing. However, the grants are to be fully funded by the province. We verified that no funds were disbursed during the review period.

7. *Manitoba Development Corporation.* During verification, we discovered that East-West Packers received a forgiveable loan from the Manitoba Development Corporation. We requested additional information on the Manitoba Development Corporation but none was submitted. However, using our methodology, the forgiveable loan was received too late to have provided a benefit to the company during the review period.

8. *Manitoba Hog Income Stabilization Program.* This program provided income support payments to hog producers when the market price for hogs fell below an established price support level. It was funded by premiums from participating producers and from the provincial government. This program was terminated effective June 28, 1986. We verified that no assistance was provided to hog producers during the review period, as the last payout under this program was made in July 1986.

9. *Ontario Export Sales Aid.* This program assists agriculture and food producers and processors in developing markets abroad by providing financial and technical support for various promotional activities. We verified that no assistance was provided to hog or pork producers during the review period.

10. *Ontario Small Food Processors Assistance Program.* This program assists eligible small food processing companies by improving their access to market information, strengthening their business planning skills and capabilities, and providing financial assistance on eligible capital investments. We verified that no assistance was provided to hog or pork producers during the review period.

11. *Quebec Meat Sector Rationalization Program.* Under this program, the Ministry of Agriculture assumed part of the eligible capital costs of investments for the establishment, standardization, expansion, modernization or amalgamation of slaughterhouses and meat processing plants. The program started in 1975 with a three-year mandate, after which it was renewed four times for one year at a time. The program officially terminated in 1982, with financial assistance granted until 1984. We verified that there were no benefits to slaughterhouses or pork packers under this program during the review period.

Comments

All written comments submitted by the interested parties in this investigation which have not been previously addressed in this notice are addressed below.

Comment 1. Respondents assert that the application of section 771B in this investigation is inconsistent with U.S. obligations under the General Agreement on Tariffs and Trade (GATT) which states that a signatory cannot impose a duty in excess of the subsidy. Respondents maintain that unless it can be shown that benefits completely pass through from the producers of the raw agricultural product to the processors of that product, the countervailing duty on the procesed product may be greater than the actual subsidy to the producers of the processed product.

Petitioner argues that the application of section 771B is not a violation of the GATT because the type of analysis contained in that section has been used in several previous agricultural cases where a "pass through" analysis was deemed inappropriate. According to petitioner, in cases involving agricultural products which are closely related, such as hogs and pork, any subsidy paid on the raw product is itself paid on the initially processed product. Moreover, petitioner claims that the government of Canada has applied a similar analysis in a countervailing duty investigation involving boneless beef from the European Economic Community. Petitioner contends that in that investigation the Canadians considered benefits to cattle producers as direct benefits to producers of boneless beef.

DOC Position. Section 771B is consistent with Article VI(3) of the GATT. Article VI(3) of the GATT holds, in part, "No countervailing duty shall be levied on any product * * * in excess of an amount equal to the estimated bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product in the country of origin or exportation * * *" First, section 771B simply recognizes that, due to the nature of the market for certain agricultural products, the subsidy on such products is deemed to be provided directly to the manufacture, production, or exportation of the processed product. See *Application of Section 771B.* Second, section 771B does not inflate the subsidy given on the raw or processed product. In fact, to accurately measure the subsidy, we used a conversion factor to calculate the percentage of pork yield from live swine. For these reasons, section 771B remains consistent with the GATT.

Comment 2. Respondents contend that section 771B supersedes any prior administrative practice regarding raw and processed agricultural products. Respondents argue that the Department's practice in such cases was not consistent and consequently could not be considered to be codified in section 771B.

DOC Position. The criteria codified in section 771B are the same criteria used in *Swine.* In fact, as the legislative history clearly shows, Congress passed this amendment in order to codify the Department,s practice in past investigations regarding agricultural products, particularly the *Swine* investigation. For these reasons, we consider previous final and preliminary determinations that discussed these past practices to be relevant to this investigation.

Comment 3. Petitioner argues that the Department's determination that 20 percent value added was not limited in *Initiation of Countervailing Duty Investigation: Certain Table Wine from France* (50 FR 40480, October 4, 1985) (*Table Wine*), is not relevant to this case because, unlike hogs, grapes have several other end uses. Petitioner argues that the value added threshold for a

product with multiple alternative retail uses is not necessarily the same as for a product dedicated to a single end use.

Respondents argue that the Department should find the 20 percent value added by pork packers to be more than limited, as it found in the initiation notice for *Table Wine*. Respondents argue that in *Table Wine* the Department refused to consider benefits to grape growers as benefits to wine producers because the value added by wine producers was at least 20 percent.

DOC Position. We have determined that, in this investigation, it is reasonable to consider the 20 percent added by pork producers to live swine to be limited value, as the term is defined under section 771B. Because we never reached a preliminary or final determination following the initiation of *Table Wine*, the initiation notice for that investigation carries no precedential weight.

Comment 4. Petitioner contends that the Alberta Crow Benefit Offset Program is countervailable because it provides direct benefits to livestock producers who use either farm-fed or purchased grains.

Respondents assert that the Alberta Crow Benefit Offset Program is not countervailable because the program only partially offsets the disadvantage to grain users created by the federal Crow Benefit Program. Respondents argue that it is consistent with Department practice to find such offsetting programs not countervailable when there is no gross subsidy to the producer. Respondents cite the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from the Federal Republic of Germany* (47 FR 39345, September 7, 1982) (*FRG Steel*), and the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium* (47 FR 39304, September 7, 1982) (*Belgium Steel*), as examples of cases involving offsetting programs which were found not countervailable. In addition, respondents claim that if there is any benefit to hog producers, that benefit goes to an input, grain, and therefore an upstream subsidy investigation is required. Since no upstream investigation has been carried out, respondents contend that any possible benefit to hog producers cannot be measured.

DOC Position. Unlike the Special Canada Grains Program, this program is not tied to grain production; it is limited to feed grain users and merchants. Therefore, we have determined that it is countervailable.

The fact that a program is designed to offset the economic effects of another government program or policy does not exempt it from investigation under the countervailing duty law. For example, programs designed to exempt certain companies from income taxes in order to offset the effect of an extremely high national income tax policy are still potentially countervailable. In order to be considered an offset, the criteria of the offset provisions of section 771(6) of the Act must be met. Clearly, these provisions were not met here.

We reject respondents' claim that this program is analogous to *FRG Steel*. In that investigation, the German Government chose to impose an import ban on coal and to subsidize coal production. We found no countervailable benefit to steel producers resulting from the coal subsidy because the price that steel producers were paying for coal was higher than the world price. Since the *FRG Steel* determination, we have adopted an upstream subsidy analysis, which would now be applied to determine whether benefits to coal producers passed through to steel producers. In this investigation, the benefit is paid directly to grain users and not to grain producers. Thus, there is no need to conduct an upstream subsidy analysis.

The precedent set in *Belgium Steel* also does not apply to this investigation. In *Belgium Steel*, the government assumed responsibility for funding the cost it imposed on the steel companies by mandating early retirement of certain workers. We determined in that case that this assistance was not countervailable because it benefitted only the workers and not the steel companies.

Comment 5. Petitioner asserts that the Department should determine that at least 50 percent of all benefits under the Alberta Crow Benefit Offset Program are paid to hog producers because hogs account for about 50 percent of total feed consumption in both eastern and western Canada. Petitioner contends that the 12 percent figure used in the preliminary determination should be rejected because it is based on the relative value of swine with respect to other livestock and, therefore, is not relevant to the amount of feed grains consumed by hogs.

Respondents argue that the Department should not use the 50 percent figure requested by petitioner because (1) it is unverified, (2) it relates to feed consumption in western Canada and not Alberta, and (3) it is unclear whether this 50 percent figure relates to all feed grains or just corn and barley. Moreover, respondents claim that the 12 percent figure used in the preliminary determination was based on the cash receipts for hog producers over the cash receipts for all livestock producers. Respondents argue that it would be more accurate to use the cash receipts for hog producers over cash receipts for all agricultural production because this program benefits grain producers and not livestock producers. Respondents claim that the correct percentage of payouts which can be attributed to hog producers is 5.48 percent.

DOC Position. We have used, as best information available, data contained in the publication *Agriculture in Alberta*, which stated that hogs accounted for 15 percent of the consumption of the province's barley production, and that barley is the primary grain fed to hogs in Alberta. We consider this to be the most appropriate measure of the benefits conferred on hog production under this program. We have rejected respondents' 5.48 percent figure because the relative value of hogs to other agricultural commodities bears no relationship to the amount of grains fed to hogs. The 15 percent figure published in *Agriculture in Alberta* is the only data we have on the amount of grain consumed by hogs in Alberta and represents the best information available to measure the countervailable benefit under the program.

Comment 6. Petitioner argues that the full amount of rebates to hog producers under the Ontario Farm Tax Rebate Program should be found countervailable because some farmers, namely those with a gross value of production of less than Can$5,000, are ineligible for benefits. Petitioner maintains that in two prior cases, *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Lime from Mexico* (49 FR 35672, September 11, 1984) and *Groundfish*, programs which provided higher benefits to certain groups or classes of producers were found countervailable to the extent that there was a differential between the most and the least preferred producer. Since the least preferred producer in this program receives no benefits, petitioner contends that all benefits to hog producers should be found countervailable.

Respondents argue that this program is generally available to all *bona fide* farmers and that only rebates to swine producers in northern and eastern Canada with a gross value of production between Can$5,000 and Can$8,000 are countervailable. Respondents also claim that the programs cited by petitioner are not relevant in this investigation because under those programs, even the least preferred producer was included in

the program, whereas those farmers with a gross value of production of less than Can$5,000 are not even eligible under this program. Respondents assert that these farmers are not eligible because they are not considered to be bona fide farmers.

DOC Position. For purposes of this program, the province of Ontario has defined a bona fide farmer as one with a gross value of production of at least Can$5,000 a year. We find that definition to be reasonable and one that does not restrict benefits to any specific group within agriculture. However, we do find the program countervailable to the extent that farmers in southern and western Ontario need a gross value of production of Can$8,000 to qualify for the program. Our decision is consistent with the cases cited by petitioner. In each of those cases, we only countervailed the difference in the level of benefits based on regional distinction.

Comment 7. Respondents argue that the Department is not authorized to examine the process by which benefits are conferred in determining whether benefits under the tripartite program are limited to a specific enterprise or industry or group of enterprises or industries. They state that the CIT has "never approved * * * the examination of governmental discretion or intent" in determining whether a program is limited to a specific enterprise or industry or group of enterprises or industries. They cite *Cabot Corp.* v. *United States*, 620 F. Supp. 722, 730 (1985)(*Cabot I*), in which the Court ruled that the Department "must examine the actual results or effects of assistance provided by foreign governments and not the purposes or intentions."

Petitioner counters that the *Cabot I* citation is part of a larger discussion having nothing to do with the role of intent or discretion, and that "the passing reference to intent" is therefore *dicta*. Petitioner argues that, "in the absence of any reliable evidence of specific criteria for extending tripartite coverage to given commodities, the Department must examine discretion and intent in order to determine how the tripartite schemes, as a group, operate."

DOC Position. We typically consider three factors in determining whether a program is limited to a specific enterprise or industry or group of enterprises or industries: (1) The extent to which a foreign government acts (as demonstrated in the language of the relevant enacting legislation and implementing regulations) to limit the availability of a program; (2) the number of enterprises, industries, or groups thereof that actually use a program, which may include the examination of disproportionate or dominant users; and (3) the extent, and manner in which, the government excercises discretion in making the program available. With respect to the third factor, it is our general policy when verifying domestic programs to review the procedures for approving or rejecting applications for benefits. We must examine relevant documents to ensure that a situation does not exist where a program, which based on the statute appears to be available to all companies in a country, is being administered in a manner that is distortive. See, for example, *Wire Rod.*

At verification, we found no standard criteria for establishing or operating tripartite agreements. Instead, we found that (1) tripartite agreements only exist for nine agricultural commodities; (2) tripartite agreements do not exist for all commodities requested by producers; (3) different levels of stabilization exist among commodities covered by tripartite agreements, and (4) even among swine producers, benefits are not available on equal terms, due to the fact that Quebec is allowed to maintain its provincial stabilization program while other provincial stabilization programs must be phased out.

Comment 8. Petitioner argues that the benefit from the tripartite program should be calculated on a credits-as-earned basis. Petitioner states that this methodology is consistent with the Department,s past practice, and cites *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Steel Wire Nails from New Zealand* (52 FR 37196, October 5, 1987), in which benefits under the Export Performance Taxation Incentive (EPTI) program, a New Zealand tax program, were calculated in this manner because there was "no uncertainty as to eligibility, no need for complex tax accounting, and no dependence on ultimate tax liability." Petitioner asserts that the tripartite program is similar in that there is "no uncertainty as to eligibility, no need for complex accounting, and no adjustments for individualized circumstances." Petitioner adds that the credits-as-earned methodology would yield the most accurate cash deposit rate because it is "based on market conditions which actually existed during the review period."

The Canadian Pork Council (CPC) argues that, if the Department does determine that the tripartite program and provincial stabilization programs are countervailable, the benefits should be based only on government contributions to the stabilization fund, regardless of payments to producers. It characterizes the tripartite program as an insurance scheme in which "the actual benefit to producers * * * should be viewed as the income security that is available on a continuing basis" which "should be measured not by the amount of any particular payment a producer may receive in any given year, but by the funds available in the 'insurance' plan, made up of premiums paid by producers, provincial and Federal governments, and any interest on the accumulated funds." The CPC counters petitioner by stating that this methodology would result in "a more predictable level of countervailable duties from year to year, and avoid significant differences between deposits and assessed duties."

The Canadian Meat Council and Canada Packers, Inc., (CMC and CP) agree with the CPC but add that if the Department decides not to use the government contribution approach, it should use the credits-as-earned methodology suggested by petitioner. The CMC and CP qualify this point by arguing that the time period used should be fiscal year 1988/89 (April 1, 1988–March 31, 1989). They state that the credits-as-earned method and the fiscal year 1988/89 time period would result in a deposit rate "that is most consistent" with any final duties which might later be assessed in an administrative review.

DOC Position. The Department has consistently used the cash flow method in determining when benefits are received.

There are two exceptions. One applies to certain situations involving big ticket items, the production and delivery of which may extend over several years. In such situations, the application of the cash flow method would enable certain countervailable subsidies to go unremedied. *See Final Affirmative Countervailing Duty Determination: Offshore Platform Jackets and Piles from Korea*, 51 FR 11779 (1986). This is not the case with payments under the tripartite program, which would be captured at the time they are paid out to producers.

The second exception involves an export benefit provided as a percentage of the value of the exported merchandise (such as a cash payment or an overrebate of indirect taxes) on the date of export. This exception is based on the New Zealand EPTI program cited by petitioner. The EPTI example is not applicable here, however, because the recipients of the EPTI payments knew at the time they made their export sales what their cash payment would be. By contrast, hog producers enrolled in the tripartite plan for hogs do not know what cash payments, if any, they will

receive until their checks are sent out. Certainty as to the amount to be received does not occur when the federal and provincial governments contribute to the stabilization fund or when hogs are sold.

Regarding our use of the cash-flow methodology for determining when benefits are received, we note that under Article VI(3) of the GATT we are not allowed to countervail more than the actual amount of a subsidy. Our cash-flow methodology ensures that we do not exaggerate the actual subsidy paid on a product during the period under review. The accrual method suggested by respondents could lead the Department to finding a subsidy when, in fact, pig farmers have received no payments at all or to finding no benefit when pig farmers actually received substantial payments.

As for the argument made by the CMC and CP that we change our review period to the Government of Canada's 1988/89 fiscal year, the Department has consistently refused to change the review period in an investigation after the preliminary determination. To change the review period after the preliminary determination would substantially prejudice the position of all parties to the proceeding by decreasing their ability to comment on our findings.

Comment 9. Petitioner states that there are discrepancies between the tripartite payouts reported in the March 9, 1989 response and those reported in a subsequent response. Petitioner argues that the Department should therefore use the higher figures contained in the later response.

Respondents state that the Department verified the figures reported in the March 9 response and that the figures contained in the subsequent response are hypothetical amounts based on 100 percent participation in the tripartite program, *i.e.*, participation of all ten provinces and all federally and provincially inspected plants and all exports of market hogs, rather than the actual amounts paid out under the program.

DOC Position. We have based our calculations on verified information.

Comment 10. Respondents argue that we should allocate the benefits provided to the production of swine over the entire live weight of swine. Citing *Groundfish*, respondents contend that when analyzing benefits from a domestic subsidy, the Department's practice is to allocate those benefits over all domestic production. They state that the Department allocated the benefit over all fresh fish and shellfish, even though shellfish was not under investigation. They also cite *Lamb Meat 1985*, in which the Department allocated the domestic subsidy over all products produced during the slaughter operation, including the meat, pelts, wool and offal.

DOC Position. Respondents cite *Lamb Meat 1985* as an instance where the Department allocated the domestic subsidy over all products produced during the slaughter operation. This case is not relevant to the present investigation, however, as hogs are raised for the sole purpose of producing pork. Lambs, on the other hand, are raised for two primary purposes, their meat and wool. *Groundfish* also has no relevance to this investigation. In *Groundfish*, the Department did allocate certain program benefits over fish and shellfish. We did so because benefits under those programs were provided to both fish and shellfish and could not be segregated to the subject merchandise.

Comment 11. Petitioner argues that slaughter sows and boars should be excluded from the denominator used to calculate benefits under any program that does not cover sows and boars. Sows and boars are not eligible under the tripartite program and were considered a distinct subclass of merchandise in the Department's first administrative review of the countervailing duty order on live swine. For that review, the rate for all programs under investigation was recalculated by deducting 2.1 percent of production to account for sows and boars.

Respondents, citing the *Live Swine Review*, also argue that the Department should calculate a separate rate for sows and boars and, in addition, determine which benefits pass through to producers of sow and boar meat. They maintain that if the Department does not calculate a separate rate for sows and boars, it will be determining that benefits from programs for which sows and boars are ineligible pass through to sow and boar meat. They maintain that sow and boar meat should not be subjected to any countervailing duty on fresh, chilled, and frozen pork produced from market hogs. They contend that sow and boar meat is distinguishable from market hog meat by its color, weight, and consistency, and that boar meat must be stamped as such.

DOC Position. We have calculated a separate rate for sows and boars. Sows and boars are not eligible for stabilization under the tripartite and other subsidy programs. Additionally, sows and boars were considered a distinct subclass of merchandise in the Department's *Live Swine Review*. Following the methodology used in that review, we have deducted 2.1 percent of hog production to account for sows and boars, where appropriate, from our subsidy calculations.

Comment 12. Respondents contend that the Department's use of total pork production in the five provinces as the denominator is accurate. They maintain that, unlike imports of live swine, pork imports are not identified by their province of origin. Additionally, hogs often originate in one province but are exported as pork by another province. For these reasons, respondents state that calculating the countervailing duties using the trade-weighted approach would be inaccurate.

DOC Position. We agree. We verified that hogs are often shipped across provincial boundaries for slaughter and cutting into pork. Therefore, any countervailing duties based on the trade-weighted approach would overstate or understate the level of benefit depending on whether the province is a net importer or exporter of hogs.

Verification

In accordance with section 776(b) of the Act, except where noted in this determination, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to suspend liquidation of all entries of fresh, chilled, and frozen pork from Canada which is entered, or withdrawn from warehouse, for consumption, on or after May 8, 1988, the date of publication of our preliminary determination in the **Federal Register**. The liquidation of all entries, entered or withdrawn from warehouse, for consumption will continue to be suspended, and as of the date of publication of this notice in the **Federal Register**, the Customs Service will require a cash deposit or bond for all entries of fresh, chilled and frozen pork equal to Can$0.08/kg. (Can$0.036/lb.), and zero for all entries of fresh, chilled, and frozen sow and boar meat.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on all entries of fresh, chilled, and frozen pork from Canada entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705 (d) of the Act [19 U.S.C. 1671d(d)].

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

July 17, 1989.

[FR Doc. 89-17278 Filed 7-21-89; 8:45 am]

BILLING CODE 3510-DS-M

Notice of Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88-095R. *Applicant:* University of Chicago, 5801 South Ellis Avenue, Chicago, IL 60637. *Instrument:* Laser System. *Manufacturer:* Lumonics, Canada. Original notice of this resubmitted application was published in the **Federal Register** of March 15, 1988.

Docket Number: 89-163. *Applicant:* The College of William and Mary, Virginia Institute of Marine Science, Route 1208, P.O. Box 1346, Gloucester Point, VA 23062. *Instrument:* Electronic Fish Measuring Boards, Model IV. *Manufacturer:* Limnoterra Atlantic, Inc., Canada. *Intended Use:* The instrument will be used in studies of various fish and crustaceans native to the Chesapeake Bay and Mid-Atlantic Bight to determine the abundance and length frequency distribution. *Application Received by Commissioner of Customs:* June 13, 1989.

Docket Number: 89-164. *Applicant:* University of Illinois at Chicago, Department of Chemistry, 829 W. Taylor Street, Chicago, IL 60680. *Instrument:* Excimer Laser, Model 201F MSC.*Manufacturer:* Lambda Physik, West Germany. *Intended Use:* The instrument will be used in studies to determine if the oxygen produced by photodissociating carbon dioxide is electronically excited. *Application Received by Commissioner of Customs:* June 13, 1989.

Docket Number: 89-165. *Applicant:* Southwest Foundation for Biomedical Research, West Loop 410 at Military Drive, P.O. Box 28147, San Antonio, TX 78284. *Instrument:* Electron Microscope, Model JEM 1200EX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for viral assay, identification and pathology in cell culture and animal tissue; diagnosis including neoplasia, mycotic, protozoal and degenerative disease. The specimens will be of biological origin, including animal tissue, cell culture, and human tissue. *Application Received by Commissioner of Customs:* June 13, 1989.

Docket Number: 89-166. *Applicant:* University of Virginia, Charlottesville, VA 22901. *Instrument:* Scanning Electron Microscope, Model JSM-840A/FCS. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for studies of metals, alloys, ceramics, composite materials, electronic materials, geological, and polymeric or biological materials. The experiments to be conducted will include high resolution microprobe analysis, scanning electron microscopy imaging of surface microstructures, and determination of the relationship of chemical composition and microstructure to materials properties. In addition, the instrument will be used for educational purposes in two courses: MS-604, Scanning Electron Microscopy and Microanalysis, and MS 692, Materials Science Laboratory. *Application Received by Commissioner of Customs:* June 19, 1989.

Docket Number: 89-167. *Applicant:* Brandeis University, Rosenstiel Basic Medical Sciences Research Center, P.O. Box 9110, Waltham, MA 02254-9110. *Instrument:* Electron Microscope, Model CM12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used in various research projects to determine the three-dimensional structure of organized macromolecular systems and to understand their functions in terms of dynamic states of their structure. *Application Received by Commissioner of Customs:* June 19, 1989.

Docket Number: 89-168. *Applicant:* University of Arkansas for Medical Sciences, College of Medicine, 4301 West Markham, Little Rock, AR 72205-7199. *Instrument:* Electron Microscope, Model JEM 100CX. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument wil be used to carry out ultrastructural studies on the nervous system and musculoskeletal system. Included among these are studies related to:

1. Development of the spinal cord,
2. Responses of the spinal cord to injury,
3. Effects of ethanol (alcohol) on responses of brain cells to injury,
4. Graft versus host disease and its effect on brain development,
5. Altered gene expression in Alzheimer's dementia,
6. Cellular transplantation into the spinal cord in an attempt to restore functional losses,
7. Immunological models of receptors on nerve cells,
8. Trophic factors involved in survival of retinal neurons and
9. In vitro and in vivo models to study repair of the cartilages in the knee.

In addition, the instrument will be used for training graduate students and postdoctoral fellows to carry out portions of these studies. *Application Received by Commissioner of Customs:* June 20, 1989.

Docket Number: 89-169. *Applicant:* University of Georgia, Athens, GA 30602. *Instrument:* Electron Probe X-ray Microanalyzer, Model JXA-8600. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to obtain quantitative major, minor, and trace element analyses of geologic materials, and to determine element distributions in complex, multi-

phase materials. These data will be used to determine the physical conditions affecting the formation and evolution of the earth's crust and mantle. In addition, the instrument will be used in teaching various geology courses. *Application Received by Commissioner of Customs:* June 21, 1989.

Docket Number: 89–170. *Applicant:* New York State Department of Health, Empire State Plaza, Albany, NY 12201. *Instrument:* Electron Microscope, Model H–7000, with Accessories. *Manufacturer:* Hitachi, Ltd., Japan. *Intended Use:* Studies of air- and waterborne asbestiform minerals, aerosols associated with acid rain and biological specimens including bacterial, fungi, viruses and tissue culture cells. Electron images, x-ray energy spectra and diffraction patterns from the above materials will be recorded on photographic films. The structural relationship between pathogens (fungal, bacterial and viral) and host cells will be studied. *Application Received by Commissioner of Customs:* June 21, 1989.

Docket Number: 89–171. *Applicant:* University of Alabama at Birmingham, Department of Biochemistry, UAB Station, 520 CH19, Birmingham, AL 35294. *Instrument:* Rapid Kinetic Instrument. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used for investigations of fast to very fast (a fraction of one second to tens of a millionth of one second) chemical and biochemical reactions. The objective of the experiments conducted is to understand the fundamental processes related to the mechanisms of diverse biological processes such as muscle contraction, enzyme action, transport of metabolites, etc. *Application Received by Commissioner of Customs:* June 23, 1989.

Docket Number: 89–172. *Applicant: National Institute of Standards and Technology, Gaithersburg, MD 20899. Instrument:* Ultraviolet Fourier Transform Spectrometer, Model FT500. *Manufacturer:* Chelsea Instruments, Ltd., United Kingdom. *Intended Use:* The instrument will be used for fundamental research in trace atomic spectrometry and to fully characterize atomic spectra of metallic and some non-metallic elements in common analytical plasmas such as the inductively-coupled plasma. This characterization will include the accurate determination of spectral line positions and intensities for all the elements normally encountered in chemical analysis. *Application Received by Commissioner of Customs:* June 28, 1989.

Docket Number: 89–173. *Applicant:* Board of Trustees of Southern Illinois University, School of Medicine, 801 North Rutledge, Springfield, IL 62702. *Instrument:* Electron Microscope, Model H–7000. *Manufacturer:* Nissei Sangyo America, Ltd., Japan. *Intended Use:* The instrument will be used to study binding sites in lens membranes, morphology of cytoplasmic vesicles produced by cloned genes, synaptic development in cultured neurons, age-related loss of hearing and receptor sites, attachment and infection of two sexually transmitted disease pathogens, neurotransmitters in nerve terminals of cerebral blood vessels, effects of ototoxic drugs on cochlea, immune and non-immune interactions of *Histoplasma capsulatum* and cultured endothelial cells, synaptic morphology and auditory function during development, and effects of chronic maternal insults (alcohol, caffeine, etc.) and stress on fetal tissue. The instrument will also be used to teach medical and graduate level students. *Application Received by Commissioner of Customs:* June 28, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89–17279 Filed 7–21–89; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Advisory Board Meeting

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Advisory Board has been changed as follows: The 12–13 September 1989 meeting has been rescheduled to the date listed below.

DATE: 25–26 September 1989, 9:00 a.m. to 5:00 each day.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA on related scientific and technical intelligence matters.

Dated: July 18, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–17266 Filed 7–21–89; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Chief of Naval Operations; Rescheduling of Closed Meeting

Notice was published July 19, 1989 at 54 FR 30240 that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Technology Surprise Task Force will meet August 8–9, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. Because of operational necessity, this meeting has been rescheduled from August 8–9, 1989 to August 1–2, 1989.

This notice is being published late because operational necessity constitutes an exceptional circumstance, not allowing for 15 days' Notice of this meeting.

Date: July 20, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–17327 Filed 7–21–89; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: August 3–4, 1989, 9:00 a.m. until conclusion of business each day.

ADDRESSES: Holiday Inn on the Bay, 1355 Harbor Drive, San Diego, California 619/232–3861.

FOR FURTHER INFORMATION CONTACT: Jo Jo Hunt, Executive Director, National Advisory Council on Indian Education, 330 C Street SW., Room 4072, Switzer

Building, Washington, DC 20202-7556 (202/732-1353).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, Title V, Pub. L. 100-297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

The Executive Committee of the Council will meet starting at approximately 9:00 a.m. and will end at the conclusion of business each day at approximately 5:00 p.m. The meeting is open to the public. The agenda includes reports by the Chairman and Executive Director; a review of the updated NACIE Handbook; a planning session for the agenda of the Full Council Meeting to be scheduled in October 1989 in conjunction with the meeting of the National Indian Education Association in Anchorage, Alaska, and planning of any site visits in Alaska; discussion of the staff evaluation process; and approval of the 1990 revised budget proposal and the 1991 proposed budget for the Council.

The public is being given less than 15 days notice due to rescheduling problems of this previously cancelled meeting of the Executive Committee and the need to hold the meeting as soon as possible.

Date: July 19, 1989. Signed at Washington, DC.

Jo Jo Hunt,

Executive Director National Advisory Council on Indian Education.

[FR Doc. 89-17315 Filed 7-20-89; 8:45 am]

BILLING CODE 4000-01-M

Office of Elementary and Secondary Education

Education Appeal Board Hearings; Intent to Compromise a Claim, Kansas Department of Education

AGENCY: Department of Education.

ACTION: Notice of intent to compromise a claim.

SUMMARY: The Department intends to compromise a claim against the Kansas Department of Education now pending before the Education Appeal Board (EAB), Docket No. 31-(295)-88. (20 U.S.C. 1234a(f) (1982)).

DATE: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before September 7, 1989.

ADDRESS: Comments should be addressed to Patricia L. Boochever, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., (Rooms 4091, FOB-6), Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The claim in question arose from an audit of the financial affairs and operations of the Kansas Department of Education (State) for the two fiscal years ended June 30, 1985 and June 30, 1986. The audit was performed by Peat, Marwick, Main & Company, Certified Public Accountants, to fulfill the requirements of Office of Management and Budget Circular A-128. The audit included the evaluation of the internal control systems, including applicable internal administrative controls, used in administering Federal financial assistance programs. Among the systems examined was the allocation of funds to local educational agencies (LEAs) under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801 *et seq.*). Chapter 1 provides financial assistance to State and local educational agencies for programs and projects designed to meet the special educational needs of educationally deprived children in areas of high concentrations of children from low-income families.

During the course of the audit, the auditors discovered that some allocations, although based on the approved procedures, were not made correctly for several LEAs. Because of the nature of the allocation process, in which the total allocation remains the same, some LEAs received too little and several LEAs received too much. Within the scope of the auditors' sample, two counties, Washington and Crawford, were found to have been given too much. Washington County was given an excess of $21,226 and Crawford County was given an excess of $9,129.

Based on these findings, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) notified the State in a final determination letter dated September 28, 1988, that it had to repay a total of $30,355 for overallocated Chapter 1 funds. In making these overallocations, the State violated the provisions in section 111 of Title I (20 U.S.C. 2711), which apply to Chapter 1 through section 554(a) of Chapter 1 (20 U.S.C. 3803(a)). Further support for the repayment of overallocated funds is contained in section 435(b)(5) of the General Education Provisions Act (GEPA) (20 U.S.C. 1232d(b)(5) which states, "that the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program." The State appealed the Assistant Secretary's determination to the EAB.

The Department proposes to compromise the full amount of the $30,355 claim for $20,000. In its response to the audit finding, the State stated that the overallocation problem occurred due to a calculation error when transfer funds from four other counties were included in the original county totals. The transfer funds should have been kept separate from the original county amount, thereby reducing the per pupil amount used in the calculation. Since it became aware of these calculation errors, the State has closely monitored its allocation procedures for this type of error, with the result that the problem has not recurred. It thus appears that the overallocation error was a one-time error. Given these factors, the percentage of the claim to be repaid, and the cost of litigating the claim through the appeal process, the Department has determined that it would not be practical or in the public interest to continue this proceeding. Moreover, the Department is satisfied that the practices that resulted in the claim have been corrected and will not recur.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by writing to Patricia L. Boochever, Esq. at the address given at the beginning of the notice.

(20 U.S.C. 1234a(f))

Dated: July 18, 1989.

Gary J. Rasmussen,

Acting Deputy Under Secretary for Management.

(Catalog of Federal Domestic Assistance No., Not Applicable)

[FR Doc. 89-17192 Filed 7-21-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangements

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation between the Government of the United States of America and the Government

of Japan concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangements to be carried out under the above-mentioned agreement involve approval of the following sales, to the Power Reactor and Nuclear Fuel Development Corporation, Tokai-Mura, Japan:

Contract Number S–JA–395, for the supply of 20 grams of uranium–233,
Contract Number S–JA–402, for the supply of 9.211 grams of plutonium as certified reference materials,
Contract S–JA–403, for the supply of 8.688 grams of plutonium as certified reference materials, and
Contract Number S–JA–404, for the supply of 81.467 grams of plutonium as certified reference materials.

The above mentioned materials will be used for the calibration of instruments and certification of analytical methods.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: July 19, 1989.

Richard H. Williamson,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89–17274 Filed 7–21–89; 8:45 am]

BILLING CODE 6450–01–M

Award of a Cooperative Agreement, Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE), Nevada Operations Office.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE, Nevada Operations Office, announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2), it intends to award a cooperative agreement on a noncompetitive basis to the University of Nevada—Las Vegas, to facilitate participation in the Yucca Mountain repository program.

The Nuclear Waste Policy Act of 1982 (NWPA) implemented a federal policy decision to concentrate the U.S. Department of Energy (DOE) disposal and research efforts in the development of a mined geologic repository. The Nuclear Waste Policy Amendments Act of 1987 (NWPAA) restricted DOE efforts in site characterization to the Yucca Mountain site, in Nevada.

UNLV has been involved since the onset of the repository related work being conducted. The role of UNLV has included work in economics and transportation as well as other areas of concern. UNLV's position in the Nevada academic community creates an environment in which dedicated participation in the current nuclear waste repository process is a logical and necessary accompaniment to the DOE effort.

Project Scope: The following areas chosen for academic pursuit include areas in which DOE has a vital interest and can provide extensive technical assistance as provided for under the NWPA.

- *Quality Assurance* (QA) requirements used for repository development purposes as set forth in 10 CFR 60 and 10 CFR 50, Appendix B, ANSI/ASME NQA–1.
- *Waste Package Assessment* review of such things as structural analysis, analysis of existing American Society of Mechanical Engineers (ASME) codes and computer codes, and investigation of labeling/identification methodologies, relevant literature search, collection of library materials, and waste package document review.
- *Socioeconomic Impact Assessment* review of documents and research and documentation of ongoing activities.
- *Monitoring Activities* such as monitoring and mitigation plan reviews.
- *Environmental Impact Assessment* review of documentation and literature search, historical data collection, and research and documentation with respect to ongoing activities.
- *Transportation Evaluation* research, review and monitoring activities with respect to new or ongoing activities.
- *Functional* activities including organizing and hosting an annual national/international symposium on nuclear waste, and other conferences or symposia.
- *Exploratory Shaft and Site Characterization* research and documentation activities to include review of documents, laboratory research, and involvement in new or ongoing activities.

The project period for the cooperative agreement is a five-year period expected to begin August 1, 1989. The total estimated cost of this award is $4,325,000 over the five-year project period.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: Carl P. Gertz, P.O. Box 98518, Las Vegas, NV 89193–8518.

Issued in Las Vegas, Nevada on June 21, 1989.

Nick C, Aquilina,

Manager.

[FR Doc. 89–1725 Filed 7–21–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TQ89–12–51–000]

Great Lakes Gas Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff Purchased Gas Adjustment Clause Provisions

July 18, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on July 14, 1989 tendered for filing Substitute Twenty-Second Revised Sheet Nos. 57(i) and 57(ii) and Substitute Ninth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that these tariff sheets reflect revised current PGA rates for the month of July, 1989. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective as requested in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Great Lakes requested the above tariff sheets become effective July 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 25, 1989. 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. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17194 Filed 7-21-89; 8:45 am]

BILLING CODE 6717-01-M

Luz Solar Partners III, Ltd., Luz Solar Partners IV, Ltd., Luz Solar Partners V, Ltd., Petition for Waiver of 25 Percent Rule and Request for Expedited Consideration

[Docket No. QF86-734-002, QF86-736-002, QF87-403-002]

July 17, 1989.

On July 7, 1989, Luz Solar Partners III, IV and V Ltd. (Petitioners), of 924 Westwood Boulevard, Los Angeles, California 90024, filed with the Federal Energy Regulatory Commission a petition for waiver of § 292.204(b) of the Commission regulations and request for expedited consideration. The Petitioners request a waiver of the 25 percent fossil fuel use rule under circumstances arising from a utility system emergency.

Any person desiring to be heard or objecting to the granting of the petition should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of Commission's Rules of Practice and Procedures. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the Petitioners. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17195 Filed 7-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-578-023 and RP85-13-032]

Northwest Pipeline Corp.; Compliance Filing

July 18, 1989.

Take notice that on July 10, 1989, Northwest Pipeline Corporation (Northwest) filed Third Revised Sheet No. 318 and Original Sheet No. 318-A to its FERC Gas Tariff, First Revised Volume No. 1-A, to be effective August 9, 1989.

Northwest states that these tariff sheets are filed in compliance with the Commission's order issued June 23, 1989. Northwest states that these tariff sheets reflect modifications to its previously approved tariff sheets relating to receipt point flexibility clarifying the type of notice Northwest will provide existing shippers when a firm transportation customer makes any change in its receipt points that might affect shippers.

Northwest states that a copy of this filing is being served on all parties of record in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such protests should be filed on or before July 25, 1989. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17196 Filed 7-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-28-003]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

July 18, 1989.

Take notice that on June 12, 1989, Panhandle Eastern Pipe Line Company (Panhandle) filed First Substitute Seventy-First Revised Sheet No. 3-A, First Substitute Forty-Eighth Revised Sheet No. 3-B, and Eighth Revised Sheet No. 43-2.1 to its FERC Gas Tariff, Original Volume No. 1, to be effective June 1, 1989.

Panhandle states that these proposed tariff sheets are being filed in compliance with the Commission's letter order dated May 31, 1989, which directed Panhandle to refile its tariff sheets to reflect the calculation of D1 and D2 demand rate changes on a quarterly basis, and to revise Section 18.4 of Panhandle's General Terms and Conditions of its tariff (pipeline supplier demand costs) to specify the calculation of demand PGA adjustments on a quarterly basis rather than a twelve-month determination period.

Panhandle states that these revised tariff sheets reflect the revised D1 and D2 rates based on Panhandle's quarterly demand billing determinants for the instant three-month PGA recovery period.

Panhandle states that these revised tariff sheets also reflect the following changes to Panhandle's D1 and D2 demand rates: (1) An increase of $4.15 for D1 and (2) an increase of 0.02 cents for D2 to reflect the current rate changes in Section 18.4 of the General Terms and Conditions of Panhandle's revised tariff provisions as directed by the Commission's letter order.

Panhandle further states that this filing is without prejudice to Panhandle's rights on rehearing and any subsequent review of the conditions contained in the Commission's May 31, 1989 letter order.

Panhandle states that copies of its filing have been served on all parties, jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such motions or protests should be filed on or before July 25, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17197 Filed 7-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-420-000]

Shell Offshore, Inc.; Petition for Declaratory Order

July 17, 1989.

Take notice that on May 18, 1989, Shell Offshore, Inc. (Shell) filed a petition requesting the Commission to issue a declaratory order stating that it has no jurisdiction over a 49.637%

undivided interest in a 3,500 HP Solar Centaur Model No. C1684 gas turbine compressor unit currently owned by Trunkline Gas Company (Trunkline) and located on the High Island Area Block A-350 "A" platform, if Shell acquires that interest from Trunkline in accordance with a "Facilities Purchase Agreement" between Shell and Trunkline. These compression facilities are the subject of a request by Trunkline for an order permitting and approving abandonment by sale which, is pending in Docket No. CP89-921-000.

Petitioner contends that the facilities are gathering facilities under section 1(b) of the Natural Gas Act (NGA) and are therefore exempt from the certificate requirements of section 7(c) of the NGA. Petitioner contends that the facilities will perform a gathering function under the primary function test set forth in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1983).

Any person desiring to be heard or to protest this petition should file a motion intervene or protest in accordance with Rule 214 or 211 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, within 30 days after 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 petition are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17198 Filed 7-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF89-3021-000]

Southeastern Power Administration; Filing

July 18, 1989.

Take notice that on June 30, 1989, the Deputy Secretary of the Department of Energy confirmed and approved, on an interim basis effective midnight June 30, 1989, Rate Schedules CBR-1-B, CSI-1-B, CEK-1-B, CC-1-C, CM-1-B, CK-1-B and CTV-1-B for power from Southeastern Power Administration's (Southeastern) Cumberland Basin Projects. The approval extends through June 30, 1994.

The Deputy Secretary states that the Commission, by order issued December 27, 1984, in Docket No. EF84-3021, confirmed and approved Rate Schedules CBR-1-A, CSI-1-A, CEK-1-A, CC-1-A, CM-1-A, CK-1-A and CTV-1-A through June 30, 1989, and by order issued January 20, 1987, in Docket No. EF86-3021, confirmed and approved Rate Schedule CC-1-B, which replaced Rate Schedule CC-1-A, through June 30, 1989.

SEPA proposes in the instant filing to replace Rate Schedules CBR-1-B, CEK-1-A, CC-1-B, CM-1-A, CK-1-A and CTV-1-A with Rate Schedules CBR-1-B, CSI-1-B, CEK-1-B, CC-1-C, CM-1-B, CK-1-B and CTV-1-B. The rate adjustment will increase annual revenues by $4,485,000, an increase of approximately 15 percent. The increase is due primarily to general inflation at the generating projects. The interim rate schedules are submitted for confirmation and approval on a final basis pursuant to authority vested in the Commission by Delegation Order No. 02040108. Approval is requested for a period beginning July 1, 1989, and ending June 30, 1994.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 1, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17199 Filed 7-21-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1957-003 Wisconsin]

Wisconsin Public Service Corp.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

July 18, 1989.

The license for the Otter Rapids Hydro Project No. 1957 located on the Wisconsin River in Vilas County, Wisconsin, expires on June 30, 1990. The statutory deadline for filing applications for new license was June 30, 1988. An application for new license has been filed as follows:

Project No.	Application	Contact
1957-003..	Wisconsin Public Service Corporation, 700 North Adams Street, P.O. Box 19002, Green Bay, WI 54307.	Mr. E.R. Mathews, WPSC, (414) 433-1300.

Pursuant to section 15(c)(1) of the Federal Power Act, the deadline for the applicant to file final amendments, if any, to its application is August 1, 1989.

The following is the schedule and procedures that will be followed in processing the application.

Date	Action
Feb. 6, 1989.....	The Commission notified the applicant that its application had been accepted.
Feb. 13, 1989.....	The Commission issued public notice of application that had been accepted describing project and established April 21, 1989, as the date for filing motions to intervene, comments, protests, and agency recommendations.

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with the applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Ed Lee at (202) 376-5786.

Lois D. Cashell,

Secretary.

[FR Doc. 89-17200 Filed 7-21-89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 17, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

For further information on this submission contact Judy Boley, Federal Communications Commission (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: None
Title: Section 22.609(e)—Disclosure of Frequency Coordination Information Upon Request
Action: New collection
Respondents: Business or other for-profit, and small businesses or organizations
Frequency of Response: On occasion
Estimated Annual Burden: 30 Responses; 30 Hours
Needs and Uses: The affected parties are existing licensees in the Rural Radio Service. New rule requires such licensees to give necessary frequency coordination information to prospective co-channel or adjacent channel licensees. Most, if not all, of the information will have already been developed by licensees in connection with normal operations. The information will be used to define the parameters of radio wave propagation of the proposed new station.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89-17189 Filed 7-21-89; 8:45 am]
BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 14, 1989.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501-3520).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: 3060-0400
Title: Tariff Review Plan
Action: Reinstatment
Respondents: Businesses
Frequency of Response: Annually
Estimated Annual Burden: 40 responses; 6,000 hours; 150 hours each
Needs and Uses: Certain local exchange carriers are required to submit Tariff Review Plans annually in partial fulfillment of cost support material required by 47 CFR 61.38. The information is used by the FCC and the public to determine the justness and reasonableness of rates, terms, and conditions in tariffs as required by the Communications Act of 1934, as amended.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89-17190 Filed 7-21-89; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010717-023.
Title: United States Atlantic and Gulf/Central America Freight Association.
Parties:
Crowley Caribbean Transport, Inc.
Seaboard Marine Line, Ltd.

Synopsis: The proposed modification would change the name of the Agreement from United States Atlantic and Gulf/Central America Freight Association to United States/Panama Freight Association. It would delete Puerto Rico, the United States Virgin Islands, Costa Rica, Honduras, El Salvador and Guatemala from the geographic scope of the Agreement. It would also permit the members to charter space and rationalize service with each other and with carriers outside the conference and prohibit independent action on loyalty contracts. It would further restate the Agreement and make other administrative changes.

Agreement No.: 202-010748-006.
Title: West Coast/Middle East and West Asia Rate Agreement.
Parties:
American President Lines, Ltd.
A.P. Moller-Maersk Line

Synopsis: The proposed modification would permit the members' existing service contracts to be extended until July 13, 1990. Proponents have requested a shortened review period.

By Order of the Federal Maritime Commission.
Ronald D. Murphy,
Assistant Secretary.
Dated: July 18, 1989.

[FR Doc. 89-17168 Filed 7-21-89; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Administrative Activities Information Collection Requests

AGENCY: Federal Trade Commission.

ACTION: Notice of application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501-3518).

SUMMARY: The Federal Trade Commission is seeking a three-year extension of the current OMB approval for five information collection requests that are used in the administrative operations of the agency. OMB Control No. 3084-0047. No changes to these requests are proposed. Each of these information requests specifies information to be submitted voluntarily to the Commission by persons who wish to do business with or receive some benefit from the agency. The information collection requests included in this submission are:

(a) FTC procurement activities;

(b) The FTC employment application for attorneys;

(c) The document order form used by the FTC public reference branch;

(d) Procedures under which states may petition for exemptions from certain FTC rules; and

(e) Rules governing claims under the Equal Access to Justice Act.

The Supporting Statement submitted with the Request for OMB Review includes an estimate that the total annual paperwork burden for these information collection requests is 2500 burden hours. The basis for this

estimate is described in more detail in the Supporting Statement.

DATES: Comments on this application must be submitted on or before August 23, 1989.

ADDRESSES: Send comments to Mr. Don Arbuckle, FTC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228. Washington, DC 20503. Copies of the application may be obtained from the Public Reference Section, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Christian S. White, Assistant General Counsel, Federal Trade Commission, Washington, DC 20580 (202) 326–2476.

Kevin J. Arquit,

General Counsel.

[FR Doc. 89–17260 Filed 7–21–89; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Procurement Official and Departure Certifications of the Procurement Integrity Act Privacy Act Systems Notice

SUMMARY: On November 17, 1988, Congress enacted the Federal Procurement Policy (OFPP) Act Amendments of 1988, Pub. L. 100–679. Section 6 of the OFPP Act Amendments of 1988 amended the OFPP Act by adding section 27, Procurement Integrity, which has been codified as section 423, Title 41 of the United States Code. The section on procurement integrity prohibits certain activities by competing contractors and Government procurement officials during the conduct of certain Federal procurements. In general, these prohibited activities involve soliciting or discussing post-Government employment, offering or accepting a gratuity; and soliciting or disclosing proprietary or source selection information. In addition, section 27 of the Act imposes a number of certification requirements on both the competing contractor and agency procurement officials in order to ensure compliance with the statute. Specifically, the Act requires certifications to be made by the competing contractors and the contracting officer prior to the award of any contract. These certifications and the instructions on use have been published on an interim basis in Acquisition Letter V–89–6, dated May 11, 1989 and will be published permanently in the Federal Acquisition Regulations (FAR) and the agency's implementing regulations. The Act also mandates that the following certifications be made by agency procurement officials, that:

1. Each procurement official is familiar with the provisions of subsections 27(b) of the Act, will not engage in any conduct prohibited by such subsection, and will report immediately to the contracting officer any information concerning a violation or possible violation of subsections 27 (a), (b), (c), or (e) of the Act as implemented in the FAR and agency supplements; and

2. Departing GSA officials and employees shall certify that he or she understands the continuing obligation not to disclose proprietary or source selection information.

The last two certifications listed are being provided for comments.

The storage and maintenance of these certifications require a Privacy Act statement systems notice. The proposed systems notice is now available for review and comment. A 30-day period has been established to allow for comment, development, and publishing the final systems notice.

DATE: Comments must be submitted by August 31, 1989.

ADDRESS: Request for copies of the proposed systems notice and comments should be addressed to: D. Ross, General Services Administration, Office of Ethics and Civil Rights, Washington, DC 20405, ATTN: AK

FOR FURTHER INFORMATION CONTACT: D. Ross or E. Ellison, General Services Administration, Office of Ethics and Civil Rights, Washington, DC 20405, ATTN: AK Phone Number FTS 566–0765 or Commercial (202) 566–0765.

Dated: June 22, 1989.

Allie B. Latimer,

Special Counsel, Office of Ethics and Civil Rights.

GSA/AK–1

SYSTEM NAME:

Procurement Official and Departure Certification Files.

SYSTEM LOCATION:

This system of records will be located: In the Central Office, in the Office of Ethics and Civil Rights, and the Office of Personnel; In the Regional Offices, in the Personnel Division and other offices as designated by the Regional Administrator.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are current and former officials and employees of the General Services Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include information on individuals, including name and office location. This system does not include official personnel files covered by the Office of Personnel Management's systems of records OPM/GOVT–1 through 9.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Office of Procurement Policy Act Amendments of 1988; Title 41 USC 423.

PURPOSE(S):

The system is established to maintain records on officials and employees affected by the Procurement Integrity Act (41 USC 423).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose information to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the General Services Administration becomes aware of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to another Federal agency or a court when the Government is party to a judicial proceeding.

c. To disclose information to a requesting Federal agency in connection with hiring or retaining an employee; issuing a security clearance; reporting an employee investigation; clarifying a job; letting a contract; or issuing a license, grant, or other benefit by the requesting agency where the information is relevant and necessary for a decision.

d. To disclose information to the Merit Systems Protection Board officials, including the Office of Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission in performing their duties.

e. To disclose information to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; exclusive representative; or other official engaged in investigating, or settling a grievance, complaint, or appeal filed by an employee.

f. To disclose information to the Office of Personnel Management under the agency's responsibility for evaluating Federal personnel management. When official personnel records in the custody

of GSA are covered in systems of records published by the Office of Personnel Management as Government-wide records, they are considered part of that system. Other official personnel records covered by notices published by GSA and are separate systems of records may be transferred to the Office of Personnel Management under official personnel programs and activities as a routine use.

g. To disclose information to a Member of Congress or a congressional staff member in response to an inquiry from that congressional office made on behalf of a constituent.

h. To disclose information to an expert, a consultant, or contractor of GSA in performing a Federal duty.

POLICIES AND PRACTICIES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and card files; magnetic tapes and disks in cabinets.

RETRIEVABILITY:

Filed at each location by name.

SAFEGUARDS:

Records stored in lockable file cabinets, lockable desk drawers, and/or secured rooms. Diskette application protected by password system.

RETENTION AND DISPOSAL:

The period the record is to be retained is pending National Archives and Records Administration approval. No copies of records are kept in this system after the original or any copies are purged. When an employee leaves the agency through transfer or separation, the records are immediately forwarded to the office maintaining the official folder. Purging information from electronic media meets this destruction requirement.

SYSTEM MANAGER(S) AND ADDRESS:

Agency officials with overall responsibility for employees uner this jurisdiction are the Office of Ethics and Civil Rights for Central Office employees and the Regional Administrators designated office for regional employees. The addresses of the Central Office and regional offices are listed in the appendix following this notice.

NOTIFICATION PROCEDURE:

Inquiries by individuals should be addressed to the supervisor or official at the address where the person worked. If not known, general inquiries should be addressed to the Office of Ethics and Civil Rights, or to the Regional Administrator for region employees or officials at the address listed in the appendix following this notice.

RECORDS ACCESS PROCEDURES:

Request from individuals should be addressed to the supervisor or official at the address where the person worked. If not known, general requests should be addressed to the Office of Ethics and Civil Rights for Central Office employees at the address listed in the appendix following this notice.

CONTESTING RECORD PROCEDURES:

GSA rules for contesting the contents and appealing initial decisions are issued in 41 CFR Part 105–64 of the Code of Federal Regulations.

RECORD SOURCE CATEGORIES:

Individuals, supervisors, or personnel records.

Appendix—GSA/Agency Addresses of Locations

Central Office

General Services Building, Office of Ethics and Civil Rights, 18th & F Streets, NW., Washington, DC 20405.

Region Offices

National Capital Region, Regional Office Building, 7th & D Streets, SW., Washington, DC 20407.

Region 1, J.W. McCormack Post Office and Courthouse Building, Boston, MA 02109.

Region 2, 26 Federal Plaza, New York, NY 1007.

Region 3, Regional Office Building, 9th and Market Streets, Philadelphia, PA 19107.

Region 4, 75 Spring Street SW., Atlanta, GA 30303.

Region 5, John C. Kluczynski Federal Building, 230 South Dearborn Street, Chicago, IL 60604.

Region 6, Federal Building, 1500 East Bannister Road, Kansas City, Missouri 64131.

Region 7, 819 Taylor Street, Fort Worth, Texas 76102.

Region 8, Building N. 41, Denver Federal Center, Denver, Colorado 80225.

Region 9, 525 Market Street, San Francisco, California 94105.

Region 10, GSA Center, Auburn, Washington 98002.

[FR Doc. 89–17268 Filed 7–21–89; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Minneapolis District Office, chaired by John Feldman, District Director. The topics to be discussed are pesticides, lead/cadmium in imported ceramicware, foodborne illness, and reproposal of tampon absorbency labeling.

DATES: Tuesday, August 1, 1989, 10:30 a.m. to 12 p.m.

ADDRESSES: U.S. Federal Court Bldg., Rm. 407, 515 West First St., Duluth, MN 55802.

FOR FURTHER INFORMATION CONTACT: Donald W. Aird, Jr., Consumer Affairs Officer, Food and Drug Administration, 240 Hennepin Ave., Minneapolis, MN 55401, 612–334–4100.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 18, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–17169 Filed 7–21–89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N–0308]

Drug Export; Hypotears Lubricating Eye Drops

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Iolab Pharmaceuticals has filed an application requesting approval for the export of the human drug HypoTears Lubricating Eye Drops to Canada, Italy, and the United Kingdom.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Mary F. Cooper, Division of Drug Labeling Compliance (HFD–313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8073.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Iolab Pharmaceuticals, 500 IOLAB Dr., Claremont, CA 91711, has filed an application requesting approval for the export of the drug HypoTears Lubricating Eye Drops, to Canada, Italy, and the United Kingdom. This product is used for the relief of symptoms associated with eye irritation due to dry eye. The application was received and filed in the Center for Drug Evaluation and Research on June 5, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 3, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: July 18, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89–17228 Filed 7–21–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Hearing: Reconsideration of Partial Disapproval of New York State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on August 29, 1989 in New York, New York to reconsider our decision to disapprove a portion of New York State Plan Amendment 85–25.

Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk August 8, 1989.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966–4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a portion of New York State plan amendment number 85–25.

Section 1116 of the Social Security Act and 42 CFR Part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate in amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

New York SPA 85–25 included more liberal income and resource methods for determining eligibility for the medically needy. The State requested both moratorium protection for the amendment and approval under section 1902(r)(2) of the Social Security Act (the Act); however, moratorium protection was not necessary since the State only requested that the SPA be effective the first day of the quarter it was submitted. The issues in this matter are: (1) Whether the State's more liberal income methods violate the Federal financial participation (FFP) limits under section 1903(f) of the Act, and must, therefore, be disapproved because approval would not be consistent with sections 1902(a)(4) and 1902(a)(19) of the Act and (2) whether approval of more liberal income and resource standards (rather than methodologies) is permitted under section 1902(r)(2) of the Act.

Subject to certain specified FFP limits under section 1903(f) of the Act, States may use income and resource eligibility methods which are more liberal than those used under the most closely related cash assistance program (Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI)). This option is available under section 1902(r)(2) of the Act (added by the Medicare Catastrophic Coverage Act (MCCA) of 1988) and was available under section 2373(c) of the Deficit Reduction Act of 1984. Because FFP limits contained in section 1903(f) remain unchanged, HCFA has determined that application of more liberal income methods under color of section 1902(r)(2) (or the moratorium) to those eligiblility groups which are subject to section 1903(f) limits can result impermissibly in these limits being exceeded.

New York SPA 85–25 proposed the following more liberal income deductions:

- For AFDC-related medically needy, an earned income deduction made for payments under the Federal Insurance Contribution Act in addition to Federal mandated work expenses deductions.
- For SSI-related medically needy, New York State Disability Payments (NYSD) deducted when FICA, NYSD and income tax deductions total more than $65. When these amounts exceed $65 the total of these deductions is made instead of the standard $65 work expense deduction under SSI.
- For all medically needy, in-kind support except when provided by legally

responsible relatives for services rendered.

These policies were disapproved because HCFA determined that the FFP limits could be exceeded. Disapproval authority is found under sections 1902(a)(4) and (19) of the Act. Under section 1902(a)(4), a State's plan must provide for such methods of administration as are found by the Secretary to be necessary for the proper and efficient operation of the plan. We believe the decision not to approve policies which will result in FFP limits being exceeded is consistent with this requirement as it is the most efficient manner of handling the interface between the eligibility requirements and the FFP limits. Under section 1902(a)(19), the plan must provide safeguards that are necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and best interest of recipients.

New York SPA 85–25 also proposed a method for counting income and resources for SSI-related medically needy pursuant to a court suit, *Rickey* v. *Perales*. This method would compare net income and resources for an aged, blind or disabled person to the higher of the medical assistance standard of need or public assistance standard of need for a household size which includes the SSI-related person and those persons for whom she/he is legally responsible (i.e., a spouse and/or dependent child under 21 living in the home). Section 1902(r)(2) allows States to use more liberal income methods subject to FFP limits. It does not, however, extend to more liberal standards. Therefore, in addition to exceeding FFP limits, HCFA determined that the policy is inconsistent with the provisions of section 1902(r)(2) because it calls for using more liberal standards and violates section 1902(a)(10)(C)(i)(III). This section requires that a single income and resource standard be used to determine eligibility for the medically needy. The proposed policy calls for variable standards.

The policy also calls for a more liberal method of treating resources than used under SSI methods. HCFA believes the policy, as written, is not approvable because it calls for using more liberal standards which exceed the authority of section 1902(r)(2) and it violates the single standard provision of section 1902(a)(10)(C)(i)(III). As noted above, this section of law require States to use a single income and resource standard for the medically needy. The proposed policy calls for variable standards.

The notice to New York announcing an administrative hearing to reconsider the partial disapproval of its State plan amendment reads as follows:

Ms. Susan V. Demers,
Deputy Commissioner and General Counsel, New York State Department of Social Services, 40 North Pearl Street, Albany, New York 12243–0001

Dear Ms. Demers: Your request for reconsideration of the decision to disapprove a portion of New York State plan amendment (SPA) 85–25 was received on June 8, 1989.

The plan amendment included more liberal income and resource methods for determining eligibility for the medically needy. The State requested both moratorium protection and approval under section 1902(r)(2) of the Social Security Act (the Act). However, moratorium protection was not necessary since the State only requested that the SPA be effective the first day of the quarter it was submitted.

The issues in this matter are: (1) whether the State's more liberal income methods violate the Federal financial participation limits under section 1903(f) of the Act and must, therefore, be disapproved because approval would not be consistent with sections 1902(a)(4) and 1902(a)(19) of the Act, and (2) whether approval of more liberal income and resource standards (rather than methodologies) is permitted under section 1902(r)(2) of the Act.

I am scheduling a hearing on your request to be held on August 29, 1989 at 10:00 a.m. in Room 238, 26 Federal Plaza, New York. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed in 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966–4471.

Sincerely,

Louis B. Hays,

Acting Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: July 7, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89–17267 Filed 7–21–89; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–89–2022; FR–2673]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning July 1, 1989, is 8⅝ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 1989, is 9 percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Financial Policy Division, Room 9132, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 426–4325 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endoresed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice

each year as notice in the **Federal Register.**

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury: (1) Has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning July 1, 1989, is 9 percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 9 percent for the six-month period beginning July 1, 1989. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1989.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate—	*On or after—*	*Prior to—*
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅝	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the six-month period beginning July 1, 1989, is 8⅝ percent.

HUD expects to publish its next notice of change in debenture interest rates in January 1990.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 17151, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: July 13, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 89-17222 Filed 7-21-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contracting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Officer of Management and Budget, Paperwork Reduction Project (1018-0015), Washington, DC 20503, telephone 202-395-7340.

Title: Woodcock Singing-Ground Survey

OMB Approval Number: 1018-0019

Abstract: The Survey an annual, cooperative effort between the U.S. Fish and Wildlife Service, the Canadian Wildlife Service and numerous State and provincial wildlife agencies, to obtain indices of woodcock population size. The resulting assessment of the population status serves to guide both the Service and State wildlife agencies in the annual promulgation of regulations for hunting woodcock. Survey data are also used to plan and evaluate woodcock management programs and provide specific information necessary for research

Service Form Number: 3-156

Frequency: Annually

Description of Respondents: Service, State, and Canadian fish and wildlife agency biologists

Estimated Completion Time: The reporting burden is estimated to average 40 minutes per survey route, including 5 minutes for reviewing instructions, 30 minutes for gathering data at survey stops, and 5 minutes for completion and review of form

Annual Responses: 1,000

Annual Burden Hours: 670

Service Clearance Officer: James E. Pinkerton, 703-358-1943 (Commercial); FTS 921-1943; Room 224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Date: June 23, 1989.

Rollin D. Sparrowe,

Assistant Director—Refuges and Wildlife.

[FR Doc. 89-17234 Filed 7-21-89; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Application Notice Establishing a Tentative Closing Date for Transmittal of Applications Under the Water Resources Research Grant Program for Fiscal Year (FY) 1990

Applications are invited for water research projects under the Water Resource Research Grant Program.

The purpose of this program is to provide matching grants for research concerning any aspect of water resource-related problems deemed to be in the national interest.

Applications may be submitted by water resources research institutes and other qualified educational institutions, private foundations, private firms, individuals, and agencies of State or local government.

Closing Date for Transmittal of Applications: Applications are tentatively due on or before November 21, 1989. The announcement will state the actual due date for receipt of the application.

Program Information: This program supports research related to the following general areas of national interest: (1) Aspects of the hydrologic cycle; (2) supply and demand for water; (3) demineralization of saline and other impaired waters; (4) conservation and best use of available supplies of water and methods of increasing such supplies; (5) water reuse; (6) depletion

and degradation of groundwater supplies; (7) improvements in the productivity of water when used for agricultural, municipal, or commercial purposes; and (8) the economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water problems. The research interests are: (1) Groundwater quality; (2) water quality management; (3) institutional change in water resource management; and (4) climate variability and the hydrologic cycle.

Application Forms: The announcement is expected to be available on or about August 7, 1989 and may be obtained by writing to the U.S. Geological Survey, ATTN: Diane Warfield, MS 205C, Office of Procurement and Contracts, 12201 Sunrise Valley Drive, Reston, VA 22092 requesting a copy of announcement 7609. All organizations that applied for a FY 1989 award, all Historically Black Colleges and Universities, and all organizations that requested to be retained on the mailing list since the last announcement will be mailed a copy of the announcement.

Further Information: For further information contact Melvin Lew, MS 426, U.S. Geological Survey, Water Resources Division, 12201 Sunrise Valley Drive, Reston, VA 22092. Telephone: (703) 648–6811.

(Catalog of Federal Domestic Assistance Number 15.806)

Dated: July 17, 1989.

Jack J. Stassi,

Assistant Director for Administration.

[FR Doc. 89–17225 Filed 7–21–89; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[NM–030–09–4333–12]

Supplementary Rules for Designated Recreation Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Rules of conduct and supplemental rules.

SUMMARY: This notice amends the previous notice published in the **Federal Register**, December 15, 1988 (Volume 53, No. 241) establishing Supplementary Rules for Designated Recreation Sites, Special Recreation Management Areas and Other Public Land in the Las Cruces District, New Mexico.

La Cueva Recreation Site and Organ Mountains Recreation Lands

1. La Cueva Recreation Site including the areas surrounding the A. B. Cox Visitor Center, Dripping Springs, the Van Patten Mountain Camp, the Boyd Sanatorium, and the Hayner Resort are limited to day use only. The gate located in T. 23 S., R. 3 E., Section 2 on the Dripping Springs Road will be locked at 10:00 p.m. during the summer and 8:00 p.m. during the winter. Authorized permittees are exempt from this limitation.

2. No open fires will be allowed in backcountry areas (over ¼ mile from any road or vehicle trail). No fires will be allowed along the Baylor Pass or Pine Tree Trails. No wood fires will be allowed in the La Cueva Picnic area (charcoal only in grills provided).

DATES: These rules will become effective July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Mark Hakkila, Natural Resource Specialist, Bureau of Land Management, Mimbres Resource Area, 1800 Marquess, Las Cruces, NM (505) 525–8228 (FTS 571–8350).

SUPPLEMENTARY INFORMATION: The authority for establishing supplemental rules is contained in 43 CFR 8365.1-6. The authority for establishing closures and restrictions is contained in 43 CFR 8364.1. These rules and closures have been recommended and adopted through development of resource management plans and recreation management plans. These rules and closures will be available in each local office having jurisdiction over the lands, sites, or facilities affected.

Richard T. Watts,

Acting District Manager.

July 18, 1989.

[FR Doc. 89–17216 Filed 7–21–89; 8:45 am]

BILLING CODE 4310–FB–M

National Park Service

Colorado River Management Plan; Grand Canyon National Park, Arizona; Availability of Draft Finding of no Significant Impact

Summary: The National Park Service proposes to implement a revised management plan for the Colorado River, Grand Canyon National Park, Arizona, as defined under Alternative B of the Draft Colorado River Management Plan/Environmental Assessment. The availability of the Draft Plan and Assessment was announced in the **Federal Register** on November 28, 1988, and the public review period extended by similar announcement on January 4, 1989. The public review period ended on January 20, 1989.

In accordance with the Council on Environmental Quality regulations at 40 CFR 1501.(e)(2)(i), a draft Finding of No Significant Impact (FONSI) is being made available for public review for a period of 30 days from the date of this Notice. The draft FONSI reflects the conclusions of the environmental assessment that the cumulative impacts of the revised plan consists of operational refinements that do no establish actions and incremental impacts adversely affecting natural and cultural resources beyond those levels under the existing 1981 Colorado River Management Plan. A summary of public comments on the draft plan and assessment also has been prepared in conjunction with the draft FONSI. Copies of the draft FONSI and summary of comments may be obtained from the Superintendent, Grand Canyon, National Park, P.O. Box 129, Grand Canyon, AZ 86023.

Stanley T. Albright,

Regional Director, Western Region.

Date: July 12, 1989.

[FR Doc. 89–17202 Filed 7–21–89; 8:45 am]

BILLING CODE 4310–70–M

Upper Delaware Scenic and Recreational River

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: August 25, 1989, 7:00 p.m.[1]

Inclement Weather Reschedule Date: September 8, 1989.

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent; Upper Delaware Scenic and Recreational River, P.O. Box C, Narrowsburg, NY 12765–0159; 717–729–8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704 (f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 USC 1724 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation and implementation of the management plan, and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will surround disposal of septage materials in the Upper Delaware Region.

The art of eel wier fishing on the Upper Delaware River, including a video recorded tape of the process.

The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting, at the permanent headquarters of the Upper Delaware Scenic and Recreational River; River Road, 1¾ miles north of Narrowsburg, New York; Damascus Township, Pennsylvania.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 89-17203 Filed 7-21-89; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88-112]

Charles Gilman, D.O., Poway, CA; Hearing

Notice is hereby given that on November 17, 1988, the Drug Enforcement Administration, Department of Justice, issued to Charles Gilman, D.O., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AG8373932, and deny any pending applications.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, August 8, 1989, commencing at 10:00 a.m., at the United States Tax Court, Federal Building and Courthouse, 450 Golden Gate Avenue, Courtroom 2041, San Francisco, California.

Dated: July 13, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17171 Filed 7-21-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-113]

Marshall Hubsher, M.D., Roslyn, NY; Hearing

Notice is hereby given that on November 4, 1988, the Drug Enforcement Administration, Department of Justice, issued to Marshall Hubsher, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Friday, July 28, 1989, commencing at 10:00 a.m., at the United States Tax Court, Federal Building, 26 Federal Plaza, Courtroom 208, New York, New York.

Dated: July 13, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17172 Filed 7-21-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-12]

Medic-Aid Pharmacy, Detroit, MI; Hearing

Notice is hereby given that on January 10, 1989, the Drug Enforcement Administration, Department of Justice, issued to Medic-Aid Pharmacy, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AM9607334, and deny any pending application for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, July 26, 1989, commencing at 10:00 a.m., at the Federal Building, 200 East Liberty, First Floor Courtroom, Ann Arbor, Michigan.

Dated: July 13, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17173 Filed 7-21-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-32]

Pharmaceutical Basics, Inc., Morton Grove, IL; Hearing

Notice is hereby given that on April 21, 1989, the Drug Enforcement Administration, Department of Justice, issued to Pharmaceutical Basics, Inc., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, RP0133203, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, August 8, 1989, commencing at 10:00 a.m., at the United States Court of Appeals for the Federal Circuit, Courtroom one, second floor, 717 Madison Place NW., Washington, DC.

Dated: July 13, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17174 Filed 7-21-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-19]

Peter Rama, D.O. Fort Lauderdale, FL; Hearing

Notice is hereby given that on March 16, 1989, the Drug Enforcement Administration, Department of Justice, issued to Peter Rama, D.O., an order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, July 20, 1989, commencing at 9:30 a.m., at the United States Tax Court, 51 Southwest First Avenue, Courtroom 1524, Miami, Florida.

Dated: July 13, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-17175 Filed 7-21-89; 8:45 am]

BILLING CODE 4410-09-M

LOWER MISSISSIPPI DELTA DEVELOPMENT COMMISSION

Announcement of Meeting and Public Hearing Cancellation

Background

The Lower Mississippi Delta Development Commission was created by Pub. L. 100-460, signed on October 1, 1988. The purpose of the Commission is to identify and study the economic development, infrastructure, employment, transportation, resource development, education, health care, housing, and recreation needs of the Lower Mississippi Delta region by seeking and encouraging the participation of interested citizens, public officials, groups, agencies, and others in developing a 10-year plan that makes recommendations and establishes priorities to alleviate the needs identified. The Commission will make its report to Congress, the President, and the Governors of Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee no later than May 14, 1990.

This notice announces a cancellation of a Commission meeting and the Arkansas public hearing (See 54 FR 29951; July 17, 1989). Both events will be re-scheduled for sometime in the Autumn.

Cancelled Meeting

Time: 4:30 p.m., July 25, 1989
Place: Phillips County Community College, Campus Drive Helena, Arkansas
Status: Open meeting

Cancelled Public Hearing

Time: 8:30 a.m., July 26, 1989
Place: Phillips County Community College, Campus Drive Helena, Arkansas
Status: Public oral and written testimony encouraged
Contact: Ann Sartwell, Telephone (901) 753-1400

Wilbur F. Hawkins,

Executive Director.

[FR Doc. 89-17320 Filed 7-21-89; 8:45 am]

BILLING CODE 6820-SN-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts/National Assembly of State Arts Agencies/ National Assembly of Local Arts Agencies Subcommittee to the National Council on the Arts will be held on August 3, 1989, from 2:30 p.m.-4:30 p.m. in Room M07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be policy issues.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-17176 Filed 7-21-89; 8:45 am]

BILLING CODE 7537-01-M

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on August 4, 1989 from 9:00 a.m. to 6:30 p.m., and on August 5, 1989 from 8:30 a.m. to 7:00 p.m., in Room M-09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on Friday, August 4, 1989 from 9:00 a.m. to 6:30 p.m., and on Saturday, August 5, 1989, from 8:30 a.m. to 1:45 p.m. The topics for discussion will include Program Review and Guidelines for Locals Program; Theater Program; Music Fellowships; Museum Program; Inter-Arts: New Forms and Regional Initiative; Dance on Tour; and Challenge III Program. In addition there will be a discussion on Reauthorization of the Agency and FY 90 Appropriations.

The remaining session on Saturday August 5, 1989, from 1:45 p.m. to 7:00 p.m. is for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants, and for discussion and development of confidential budgetary projections and related plans to be submitted to the Office of Management and Budget and the Congress. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, this session will be closed to the public pursuant to subsections (c) (4), (6) and 9(B) of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-17177 Filed 7-21-89; 8:45 am]

BILLING CODE 7537-01-M

Ad Hoc Meeting on Jazz

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that an ad hoc meeting on Jazz will be held on August 7, 1989, from 10:00 a.m.-3:00 p.m. in Room M14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be policy issues.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–17178 Filed 7–21–89; 8:45 am]

BILLING CODE 7537–01–M

Arts in Education Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on August 16, 1989, from 9:00 a.m.–3:00 p.m. in Room M14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 16, 1989, from 2:00 p.m.–3:00 p.m. The topic for discussion will be guidelines and policy issues.

The remaining portion of this meeting on August 16, 1989, from 9:00 a.m.–2:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–17179 Filed 7–21–89; 8:45 am]

BILLING CODE 7537–01–M

Media Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Media Arts Centers Section) to the National Council on the Arts will be held on August 15–16, 1989, from 9:00 a.m.–6:30 p.m., and on August 17, 1989, from 9:00 a.m.–5:30 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–17180 Filed 7–21–89; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chamber/New Music/Solo Recitalist Presenters Section) to the National Council on the Arts will be held on August 9–11, 1989, from 9:00 a.m.–6:00 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 11, 1989, from 2:00 p.m.–4:00 p.m. The topic for discussion will be policy issues.

The remaining portions of this meeting on August 9–10, 1989, from 9:00 a.m.–6:00 p.m. and August 11, 1989, from 9:00 a.m.–2:00 p.m. and from 4:00 p.m.–6:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–17181 Filed 7–21–89; 8:45 am]

BILLING CODE 7537–01–M

Office of Public Partnership Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (Locals Challenge III Section) to the National Council on the Arts will be held on August 11, 1989, from 9:00 a.m.–5:00 p.m. in Room 430 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-17182 Filed 7-21-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-206; License No. DPR-13]

Southern California Edison Co. San Diego Gas and Electric Co.; San Onofre Nuclear Generating Station, Unit No. 1; Exemption

I.

Southern California Edison Company and San Diego Gas and Electric Company (the licensees) are the holders of Provisional Operating License No. DPR-13 which authorizes the licensees to operate San Onofre Nuclear Generating Station, Unit No. 1, at power levels up to 1347 megawatts thermal (rated power). The facility is a pressurized water reactor located on the licensees' site in San Diego County, California. The license is subject to all applicable provisions of the rules, regulations and orders of the Nuclear Regulatory Commission.

II.

10 CFR 50.48, "Fire Protection," and Appendix R to 10 CFR 50, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," require that certain fire protection features be established to satisfy the General Design Criterion related to fire protection (Criterion 3, Appendix A to 10 CFR 50).

Section III.G of Appendix R requires that fire protection exist for equipment important to safe shutdown. Such fire protection is achieved by various combinations of fire barriers, fire suppression systems, fire detectors, and separation of safety trains (III.G.2) or alternate safe shutdown equipment free of the fire area (III.G.3). The objective of this protection is to ensure that one train of equipment needed for hot shutdown would be undamaged by fire, and that systems needed for cold shutdown can be repaired within 72 hours (III.G.1.b).

Section III.G.3 requires that a fixed fire suppression system be installed in an area for which alternate shutdown capability has been provided.

III.

By letter dated July 30, 1987 the licensees requested an exemption from the technical requirements of section III.G.3 of Appendix R to the extent that it requires that a fixed fire suppression system be installed in an area for which an alternate shutdown capability has been provided. Specifically, the pipe tunnel (Fire Area 1-AB-11-34) is not protected by a fixed fire suppression system.

The physical configuration of the area, including perimeter construction, fire hazards and existing protection, is as described in the licensees' submittal. The licensees justify the exemption request on the basis of the low combustible loading, limited access, existing fire protection and the capability to safely shut down the plant with undamaged systems that are physically and electrically independent of the fire area.

The technical requirements of section III.G.3 are not met in this area because of the lack of the fixed fire suppression system.

The principal concern with the existing fire protection in the pipe tunnel is that a fire of significant magnitude could occur which would damage redundant safe shutdown systems. However, the in-situ fire loading is low. If all of the combustibles were totally consumed by fire, the equivalent fire severity is about nine minutes as determined from the ASTM E-119 time-temperature curve.

The combustible inventory consists of cables in trays. A fire involving this material would be characterized, initially, by slow burning, low heat generation, and the production of moderate quantities of smoke. The smoke would be detected by the existing fire detection system which would transmit an alarm automatically to the control room. The on-site fire department would be dispatched to the scene and would put out the fire using manual fire fighting equipment.

If severe damage to safe shutdown systems occurred prior to the arrival of the fire department, a capability exists to safety shut down the plant which the licensees have affirmed is physically and electrically independent of the fire area. On this basis, the lack of a fixed fire suppression system is not considered safety significant.

Based on the above evaluation the staff concludes that the licensee's alternate fire protection configuration provides an equivalent level of safety to that achieved by compliance with Appendix R.

The purpose of section III.G.3 of 10 CFR Part 50, Appendix R is to prevent a severe fire which could damage redundant safe shutdown systems. For the reasons discussed above, a fire suppression system in this area is not necessary. Consequently, special circumstances described by 10 CFR 50.12(a)(2)(ii) exist in that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption.

Therefore, the Commission hereby approves the following exemption to Paragraph III.G.3 to Appendix R to 10 CFR Part 50: Fire Area 1-AB-11-34 (Pipe Tunnel) is not required to have a fixed fire suppression system.

It is further determined that the exemption does not authorize a change in effluent types or total amounts nor an increase in power level and will not have a significant effect on the quality of the human environment. In light of this determination and as reflected in the Environmental Assessment and Finding of No Significant Impact prepared pursuant to 10 CFR 51.2 and 51.30 through 51.32, it is concluded the instant action is not significant from the standpoint of environmental impact and an environmental impact statement need not be prepared.

For further details with respect to this action, see the exemption request dated July 30, 1987 and the Commission's Environmental Assessment and Finding of No Significant Impact dated July 5, 1989 (54 FR 29422). These are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 13th day of July, 1989.

Gary M. Holahan,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-17263 Filed 7-21-89; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

Notice is hereby given that a meeting of the Containers and Transportation Panel of the Nuclear Waste Technical Review Board will be held on Monday, August 21, 1989, from 8:30 a.m. to 4:30 p.m., on Tuesday, August 22, 1989, from 8:30 a.m. to 4:30 p.m., and on Wednesday, August 23, 1989, from 8:30 a.m. to 4:30 p.m. at the Holiday Inn—Pyramid Hotel, 5151 San Franciso Road, NE, Albuquerque, NM 87109, 1–800–544–0623. The afternoon of August 22, from 1–15 p.m. to 4:30 p.m.: will consist of a tour of several of the facilities at Sandia National Laboratory where work related to the high-level radioactive waste transportation program is performed.

The purpose of the meeting is to obtain information that the Board has requested from the Department of Energy. The briefings will cover an introduction, the cask system development program and related topics, the operational planning of transportation for the Federal waste management system, risk management and assessment in the transportation program, institutional issues and generic issues affecting transportation and the Office of Civilian Radioactive Waste Management in the Department of Energy.

The public is permitted to attend these meetings only as observers. The meeting on August 21, the morning of August 22, and August 23 will be transcribed and procedures to obtain transcripts will be provided at the meeting. To ensure that adequate facilities are provided for public attendance, persons planning to attend the meeting should contact Helen Einersen at (202) 254–4792 by July 31, 1989. Persons planning to be observers on the tour of the Sandia National Laboratory facilities must be citizens of the United States and they must call Christopher Hanus at (202) 586–4495 by July 31, 1989 in order to provide the required security information for the badging process.

Further information on these meetings can be obtained from William Coons, Executive Director, Nuclear Waste Technical Review Board, 1111 18th Street NW., Suite 801, Washington, DC 20036, (202) 254–4792.

William W. Coons,

Executive Director, Nuclear Waste Technical Review Board.

Date: July 19, 1989.

[FR Doc. 89–17221 Filed 7–21–89; 8:45 am]

BILLING CODE 6820–AM–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Canadian Unemployment and Sickness Benefit Information.

(2) *Form(s) submitted:* UI–62.

(3) *OMB Number:* 3220–0074.

(4) *Expiration date of current OMB clearance:* 09–30–89.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 25.

(9) *Total annual responses:* 25.

(10) *Average time per response:* .04 hours.

(11) *Total annual reporting hours:* 1.

(12) *Collection description:* The collection obtains from a claimant information needed to avoid payment of unemployment or sickness benefits by the RRB and the Canadian social insurance system for the same period of unemployment or sickness.

Additional information or comments: Copies of the proposed forms and supporting documents can be obtained from Ronald Ritter, the agency clearance officer (312–715–4692). Comments regarding the information collection should be addressed to Ronald Ritter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald Ritter,

Acting Director of Information Resources Management.

[FR Doc. 89–17269 Filed 7–21–89; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27037; File No. SR–CBOE–89–13]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Position Limits

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 5, 1989 the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Rule 4.11. Position Limits.

Except with the prior written permission of the President or his designee, no member shall make, for any account in which it has an interest or for the account of any customer, an opening transaction on any exchange in any option contract dealt in on the Exchange if the member has reason to believe that as a result of such transaction the member or its customer would, acting alone or in concert with others, directly or indirectly, control an aggregate position in excess of 3,000 or 5,500 or 8,000 option contracts (whether long or short) of the put class and the call class on the same side of the market respecting the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options, or such other number of option contracts as may be fixed from time to time by the Board as the position limit for one or more classes or series of options. *In addition, should a member have reason to believe that a position in any account in which it has an interest or for the account of any customer is in excess of the applicable limit, such member shall promptly take the action necessary to bring the position into compliance.* Reasonable notice shall be given of each new position limit fixed by the Board, by posting notice thereof on the bulletin board of the Exchange. Limits shall be

determined in the manner described in Interpretations .02 and .04 below.

Interpretations and Policies, .01 through .04, no change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The proposed rule change is intended to clarify the intent of the position limit rule. Recently, questions have been raised regarding the clause that implies a member must handle the order that causes a customer to exceed the position limits. The clarification specifically states a member must take the necessary action to correct a violation once the member becomes aware of a position violation. This requirement will be present whether it results from position telescoping, CMTA executions or other means in which the member does not specifically handle an order resulting in an opening transaction that causes a position limit violation.

The Exchange believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder, in particular, the proposed rule change is consistent with section 6(B)(5) of the Act, which provides among other things, that the rules of the Exchange are designed to promote just and equitable principles of trade.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

This proposed rule change will not impose a burden on competition.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding or (ii) as to which the self-regulatory organization consents, the commission will: (a) By order approve such proposed rule change, or (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 14, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 14, 1989.

[FR Doc. 89-17281 Filed 7-21-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27040; File No. SR-NYSE-89-11]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change by New York Stock Exchange, Inc. Relating to Auxiliary Closing Procedures for "Expiration Fridays"

On June 8, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to change the cut-off time on "Expiration Fridays" for entering certain market-at-the-close orders.

The proposed rule change was noticed in Securities Exchange Act Release No. 26997 (June 30, 1988), 54 FR 29424 (July 12, 1989). No comments were received on the proposal.

The proposed rule change consists of a change in the cut-off time for the entry of certain market-at-the-close orders in so-called "Pilot Stocks" on "Expiration Fridays" from 3:30 p.m. to 3:00 p.m. Information as to imbalances of 50,000 shares or more, which is currently disseminated as soon as possible after 3:30 p.m., would be disseminated as soon as possible after 3:00 p.m. At 3:30 p.m., or as soon as possible thereafter, the procedure would be repeated. For any stock for which an imbalance had been previously published, a subsequent imbalance message would be disseminated indicating whether an imbalance of 50,000 shares of more exists and, if so, the size of the imbalance.[3] The Exchange has requested that the Commission approve this proposed rule change on an accelerated basis prior to the July 21, 1989 "Expiration Friday."[4]

In September 1986, the Exchange adopted auxiliary closing procedures for use on days when stock index options and options on stock index futures expire concurrently. These procedures currently apply to 52 stocks (the so-called "Pilot Stocks", comprised of the 50 highest capitalized stocks among the Standard & Poor's ("S&P") 500 stocks, and two component stocks of the Major Market Index that are not among the S&P top 50) for all monthly expiration days. They require the entry of all market-at-the-close orders in positions relating to any strategy involving any stock index futures, stock index options, or options on stock index futures by 3:30 p.m. These procedures also require the specialist to make public market-at-the-close order imbalances of 50,000 shares or more in these stocks as soon as

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[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] The Commission approved the use of these procedures on an accelerated basis for the June 16, 1989 "Expiration Friday." *See* Release No. 26914 (June 9, 1989), 54 FR 25922, approving File No. SR-NYSE-89-12.

[4] *See* letter from Brian M. McNamara, Managing Director, Market Surveillance, NYSE, to Mary N. Revell, Branch Chief, Commission, dated July 7, 1989.

possible after 3:30 p.m. In addition, the procedures prohibit the entry of market-to-the-close orders that do *not* offset a published imbalance.

The proposed change moves the cut-off time for the above procedures from 3:30 to 3:00 p.m., with imbalance information to be disseminated as soon as possible after 3:00 p.m. At 3:30 p.m., or as soon as possible thereafter, the procedure would be repeated. For any stock for which an imbalance had been previously published, a subsequent imbalance message would be disseminated indicating whether an imbalance of 50,000 shares or more exists and, if so, the size of the imbalance. The same order entry restrictions vis-a-vis the imbalance would apply.

The NYSE stated that the purpose of the proposed rule change is to allow for more "sunshine" on market conditions for the Pilot Stocks by moving the cut-off time for current procedures, as described above, from 3:30 to 3:00 p.m. and by requiring the publication of updated imbalances at 3:30 p.m. The Exchange believes that this extra half-hour, along with the additional imbalance information, will allow market participants more time to respond to published market-at-the-close imbalances, which should further reduce end-of-day market volatility.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.[5] The market-at-the-close procedures described herein have been utilized on previous quarterly expirations dating back to September 1986 and on monthly expirations on a pilot basis since November 1988.[6] These procedures were part of efforts by the Commission and the self-regulatory organizations to address stock market volatility associated with the expiration of index derivative products traded in conjunction with stocks as part of index arbitrage. By requiring early submission of market-at-the-close orders and disseminating imbalances, the NYSE has been able to attract contra-side interest to alleviate imbalances caused by the liquidation of stock positions related to index derivative product trading strategies. The procedures have proven to be an operational success, and have contributed significantly to the smooth handling of the increased order flow associated with expirations. The proposed rule change should enhance the market-on-close procedures that have been utilized on prior expirations. The new procedure would allow for more time to disseminate market-at-the-close imbalances, thereby facilitating the attraction of contra-side interest.

The Commission finds good cause for approving this rule change prior to the thirtieth day after the date of publication of notice of filing thereof in order to ensure that the revised auxiliary closing procedures that were in effect on the June 16, 1989 "Expiration Friday" (as set forth in SR–NYSE–89–12) will be in place for the upcoming July 21, 1989 expiration. The Exchange states that the revised procedures worked well on June 16, 1989, and believes it would cause confusion to revert back to the pre-existing procedures for the July 21, 1989 expiration. Moreover, the procedures contain only a minor change from the procedures utilized by the NYSE on earlier expirations, and are intended to reduce excessive market volatility at the close.[7]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

Dated: July 17, 1989.

[FR Doc. 89–17282 Filed 7–21–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17069; 812–7221]

AMA Income Fund, Inc., et al.; Notice of Application

July 17, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: AMA Income Fund, Inc. (the "AINC Funds"); AMA Growth Fund, Inc., AMA Money Fund, Inc., Emerging Medical Technology Fund, Inc., Medical Technology Fund, Inc. (the "AMA Group Funds"); and AMA Advisers, Inc. ("AMA Advisers") (collectively, the "Applicants").

Relevant 1940 Act Sections: Exemption requested pursuant to Section 17(b) from Section 17(a) and approval under Section 17(d) and Rule 17d–1 thereunder.

Summary of Application: Applicants seek an order permitting (a) certain transactions pursuant to which the AINC Funds will acquire all of the assets, subject to the liabilities, of the AMA Group Funds, in exchange for shares of common stock of new series of the AINC Funds which will then be distributed to shareholders of the AMA Group Funds and (b) the sharing of certain expenses of the proposed reorganization by the AINC Funds and the AMA Group Funds.

Filing Dates: The application was filed on January 19, 1989, and amended on July 5, 1989 and July 17, 1989.

Hearing or Notification of Hearing. An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 10, 1989, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549; Applicants, Lynne M. Cannon, AMA Advisers, Inc., 5 Sentry Parkway West, Suite 120, P.O. Box 1111, Blue Bell, PA 19422.

FOR FURTHER INFORMATION CONTACT: Bibb L. Strench, Staff Attorney (202) 272–2856 or Brion R. Thompson, Branch Chief (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee. One may obtain a copy by going to the SEC's Public Reference Branch or by telephoning the SEC's commercial copier (800) 231–3282 (in Maryland (301) 252–4300).

Applicants' Representations

1. The AINC Funds and the AMA Group Funds (collectively, the "Funds") are registered under the 1940 Act as open-end diversified management investment companies. The AINC Funds consist of three series: U.S. Government Income Plus; Global Income; and Global

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[5] 15 U.S.C. 78f (1982).

[6] *See* Securities Exchange Act Release No. 26408 (December 29, 1988), 54 FR 343 (approving File No. SR–NYSE–88–37).

[7] The Commission did not receive any comments on SR–NYSE–89–12, which proposed the same "Expiration Friday" procedures.

[8] 17 CFR 200.30–3(a)(12) (1988).

Short Term. The AMA Group Funds consist of AMA Growth Fund, Inc. and its three series: Global Growth Portfolio, Classic Growth Portfolio and Growth Plus Income Portfolio; AMA Money Fund, Inc. and its three series: Treasury Portfolio, Prime Portfolio and Tax-Free Portfolio; Medical Technology Fund, Inc.; and Emerging Medical Technology Fund, Inc. AMA Advisers Inc., a wholly-owned subsidiary of the American Medical Association ("AMA"), is the investment adviser of each Fund. AMA is an Illinois not-for-profit association. AMA Advisers, Inc. is the investment adviser to the AINC Funds and the AMA Growth Funds. In addition, the Boards of Directors and the principal officers of all of the Funds are identical.

2. The Applicants seek an exemption pursuant to section 17(b) of the 1940 Act from the provisions of section 17(a) of the 1940 Act to permit a proposed reorganization where the AINC Funds would acquire all of the assets subject to liabilities of the AMA Group Funds. In addition, Applicants seek approval pursuant to Rule 17d–1 under the 1940 Act to effect the proposed reorganization and to permit the sharing of expenses of the reorganization by the AINC Funds and the AMA Group Funds.

3. The proposed reorganization of the AINC Funds and the AMA Group Funds will be effected pursuant to an Agreement and Plan of Reorganization between the AINC Funds and the AMA Group Funds. Under the Agreement and Plan of Reorganization, the AINC Funds will create eight additional series of funds. In exchange for their shares, the AMA Group Funds' shareholders will receive common stock of $.01 par value of the new series of the AINC Funds (the "New AINC Series Shares") equal to the number of shares owned by each shareholder in an AMA Group Fund or Funds as of the closing date of the reorganization. The AMA Group Funds will distribute to its shareholders the New AINC Series Shares it receives upon the transfer of its assets to the AINC Funds. Immediately following the exchange of the AMA Group Funds' assets for the New AINC Series Shares, the AMA Group Funds will dissolve and liquidate. Promptly after the closing date of the reorganization, an appropriate notification will be mailed to each of the AMA Group Funds' shareholders, advising them of the number of shares of the applicable series of the New AINC Series Shares which the shareholder has received.

4. The value of the AMA Group Funds' assets to be transferred to the AINC Funds and the net asset value of the New AINC Series Shares will be computed by Unified Management Corporation ("Unified"), subject to review by the independent certified public accountant for the AINC Funds and the AMA Group Funds. Unified is an unaffiliated service corporation that acts as the accounting agent for the AINC Funds. The net asset value will be computed as of the close of trading on the New York Stock Exchange and as reported to the National Association of Securities Dealers, Inc., next occurring after the effective time of the reorganization in compliance with Rules 2a–4 and 22c–1 under the 1940 Act and otherwise in accordance with the disclosure in the prospectus of each Fund.

5. The expenses of the reorganization (in excess of those expenses including without limitation fees and disbursements for attorneys, auditors, and printing costs of proxy solicitation material customarily incurred by the AMA Group Funds in connection with the conduct of its annual meeting of shareholders) will be allocated to the AINC Funds and the AMA Group Funds in proportion to their respective net assets calculated as of the close of business on the next business day after the closing date of the reorganization. Some of the expenses of the reorganization are being borne indirectly by AMA Advisers in the form of services by AMA Adviser employees in designing and effectuating the reorganization and in preparing the Application. Some of the expenses of the reorganization could be traced to particular Funds, for example, the preparation of documents to dissolve and liquidate the AMA Group Funds. The Directors of the Funds believe, however, that, in view of the expected benefits to the participants, it is reasonable to allocate the expenses on the basis of respective net assets of the Funds. It is estimated that the expenses in connection with the reorganization in excess of those normally incurred in holding AMA Group's annual meeting will be approximately $110,000 for the AMA Group Funds and $30,000 for the AINC Funds. The registration fees payable under the Securities Act of 1933 on the New AINC Series Shares issued to the AMA Group Fund shareholders will be allocated on the basis of the Funds' respective net asset values. The maximum fee payable is estimated at approximately $65,000. If the plan of reorganization is terminated without having been consummated, the expenses of the reorganization shall be allocated to the AMA Group Funds and AINC Funds in proportion to their respective net assets as of the termination date.

6. It is expected that the reorganization will be submitted for approval to the shareholders of the AMA Group Funds in December, 1989 and the acquisition would be consummated on January 1, 1990. AMA will vote its shares in the respective series of the AMA Group Funds in the same proportion as the votes of the publicly-held shares of such series.

Applicant's Legal Analysis

1. Applicants believe that certain of the Funds are under common control within the meaning of section 2(a)(9) and, thus, may be deemed to be "affiliated persons" of each other by virtue of the ownership of AMA of more than 25% of their total outstanding voting securities and that the Funds share the same investment adviser and Directors. Accordingly, since all of the Funds that make up the AINC Funds and the AMA Group Funds might be deemed "affiliated persons" of each other under the definition set forth in section 2(a)(3) of the 1940 Act, any disposition of portfolio securities by the AMA Group Funds to the AINC Funds or any acquisition by the AINC Funds of the portfolio securities of the AMA Group Funds, and the resulting exchange by Applicants of the AMA Group Funds shares for the New AINC Series Shares pursuant to the Agreement and Plan of Reorganization would be prohibited by section 17(a) of the 1940 Act absent an exemption. In addition, Applicants represent that the exemption from section 17(a) of the 1940 Act provided by Rule 17a–8 is not available with respect to the reorganization because of the share holdings of certain of the Funds by AMA. Nevertheless, Applicants state that the Directors of the Funds have made the required findings under Rule 17a–8.

2. The Directors of the Funds have been advised by counsel of the required determinations they must make under Section 17 of the 1940 Act. In making these findings, the Directors considered the costs incurred by the Funds and their shareholders under the present structure, tax consequences of the reorganization, and capabilities and resources of each of the Funds. The Directors also considered the relationship of such costs, consequences, capabilities and resources of the AINC Funds on the one hand, and the AMA Group Funds on the other. Such findings, and a summary of the bases upon which they were made, are recorded in the minute books of the respective Funds.

3. After the reorganization, Applicants believe that AINC will be able to

achieve economies of scale not attainable by the Funds alone, through the elimination of duplicative expenses and spreading of certain fixed expenses over a larger asset base. Based on present expense levels, Applicants, including the officers of the AMA Group Funds and the AINC Funds, estimate that the savings in operating costs anticipated as a result of the proposed reorganization will offset the expenses of the reorganization within from one to two years. Applicants submit that in accordance with section 17(b) of the 1940 Act, the terms of the proposed transactions are reasonable and fair and do not involve overreaching by any of the Applicants or AMA, and that the proposed reorganization is consistent with the investment policies of each Fund and consistent with the purposes of the 1940 Act. A majority of the disinterested Directors have determined that participation in the proposed reorganization is in the best interests of the AMA Group Funds and the AINC Funds and that the interest of the existing shareholders of the AMA Group Funds and AINC Funds, respectively, will not be diluted.

4. In addition, Applicants believe that the proposed reorganization and the related allocation of expenses might be deemed a joint enterprise or arrangement requiring approval under section 17(d) of the 1940 Act and Rule 17d–1 thereunder. Applicants submit that the participation of the Applicants and AMA as a shareholder of certain of the Funds in the proposed reorganization is consistent with the requirements of Rule 17d–1. The provisions of the Agreement whereby the Funds will be allocated a portion of the expenses based on their respective net assets reflects an appraisal by the Directors of the AINC Funds and the AMA Group Funds as to the relative benefits of each Fund from the reorganization. With respect to the expenses of the reorganization that could be traced to particular Funds, the Directors of the Funds believe that, in view of the expected benefits to the participants, it is reasonable to allocate the expenses on the basis of respective net assets of the Funds. Applicants note that AMA Advisers may receive some legitimate indirect benefits from the combination in facilitating more effective distribution of the Fund shares. For example, since the Fund prospectuses would be integrated and have the same expiration date, AMA Advisers could send follow-up mailings for one year without the necessity of sending another prospectus. If this leads to increased assets, then AMA Advisers' advisory fees would increase. But, as stated above, AMA Advisers is sharing some of the expenses of the reorganization by having its employees spend time and effort in designing and effectuating the reorganization and in the preparing of the application for the requested order. Accordingly, the Applicants believe that the additional expenditures by AMA Advisers are not necessary to ensure fairness of the transactions, especially since most of the benefits will enure to the Funds and their shareholders.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–17283 Filed 7–21–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17067/File No. 811–2471]

Security First Legal Reserve Fund, Inc.

July 17, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Security First Legal Reserve Fund, Inc.

Relevant 1940 Act Section: Order requested under 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 10, 1989 and amended on June 13, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested 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 August 11, 1989. 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 attorneys, by Certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 11365 West Olympic Boulevard, Los Angeles, California 90064.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst, (202) 272–2058 or Clifford E. Kirsch, Special Counsel, (202) 272–3032 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3262 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant is an open-end, diversified, management investment company. Applicant registered under the 1940 Act on May 24, 1974. Applicant filed a registration statement under the Securities Act of 1933 on May 24, 1974, which became effective on November 5, 1974 and the initial public offering began on the same day.

2. On September 8, 1986, the Board of Directors of the Applicant unanimously approved a Plan of Reorganization and Liquidation (the "Plan"). Security holders approved the Plan on June 17, 1987.

3. Pursuant to the Plan, on July 24, 1987, Security First Trust (the "Trust"), SEC File Number 811–2480, an open-end, diversified management investment company, acquired the assets and liabilities of the Applicant. The Plan provided for a tax-free exchange of shares whereby the shareholders of the Fund became shareholders of the Trust's Bond Series.

4. Applicant states that the principal purpose of the reorganization was to combine the Applicant, and other open-end management investment companies, into a single trust and thereby achieve significant operational and marketing advantages.

5. Applicant has not retained any assets.

6. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, for the benefit of any security holder.

7. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged or intends to engage in any business activities other than those necessary for the winding up of its affairs.

9. Applicant represents that the expenses incurred in connection with the reorganization were paid by The Holden Group, Inc.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 87–17284 Filed 7–21–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC- 17068/File No. 811-3374]

Security First Money Market Fund, Inc.

July 17, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Security First Money Market Fund, Inc. (the "Fund").

Relevant 1940 Act Section: Order requested under 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 10, 1989 and amended on June 13, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested 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 August 11, 1989. 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 attorneys, by Certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 11365 West Olympic Boulevard, Los Angeles, California 90064.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst (202) 272–2058 or Clifford E. Kirsch, Special Counsel (202) 272–3032 (Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3262 (in Maryland (301) 258–4300).

Applicant's Representations:

1. Applicant is an open-end, diversified, management investment company. Applicant registered under the 1940 Act on January 11, 1982. Applicant filed a registration statement under the Securities Act of 1933 on January 11, 1982, which became effective on April 16, 1982 and the initial public offering began on the same day.

2. On September 8, 1986, the Board of Directors of the Applicant unanimously approved a Plan of Reorganization and Liquidation (the "Plan"). Security holders approved the Plan on June 17, 1987.

3. Pursuant to the Plan, on July 24, 1987, Security First Trust (the "Trust"), SEC File Number 811–2480, an open-end, diversified management investment company, acquired the assets and liabilities of the Applicant. The Plan provided for a tax-free exchange of shares whereby the shareholders of the Fund became shareholders of the Trust's Money Market Series.

4. Applicant states that the principal purpose of the reorganization was to combine the Applicant, and other open-end management investment companies, into a single trust and thereby achieve significant operational and marketing advantages.

5. Applicant has not retained any assets.

6. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, for the benefit of any security holder.

7. Applicant is not a party to any litigation or administrative proceeding.

8. Applicant is not now engaged or intends to engage in any business activities other than those necessary for the winding up of its affairs.

9. Applicant represents that the expenses incurred in connection with the reorganization were paid by The Holden Group, Inc.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 89–17285 Filed 7–21–89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2362 & 2363]

Declaration of Disaster Loan Area; Indiana

Lake County and the contiguous counties of Jasper, Newton, and Porter in the State of Indiana and the contiguous counties of Cook, Kankakee, and Will in the State of Illinois constitute a disaster area as a result of damages from flooding which occurred from May 30 through June 1, 1989. Applications for loans for physical damage may be filed until the close of business on September 11, 1989 and for economic injury until the close of business on April 13, 1990 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308.

or other locally announced locations.

The interest rates are:

Homeowners with Credit Available Elsewhere	8.000%
Homeowners without Credit Available Elsewhere	4.000%
Businesses with Credit Available Elsewhere	8.000%
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000%
Businesses and Non-Profit Organizations (EIDL) without Credit Available Elsewhere	4.000%
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.125%

The numbers assigned to this disaster for the State of Indiana are 236206 for physical damage and 676300 for economic injury and for the State of Illinois, 236306 for physical damage and 678400 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: July 13, 1989.

Susan Engeleiter,

Administrator

[FR Doc. 89–17223 Filed 7–21–89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

National Transportation Policy Open Forums: Innovation and Human Factors Cluster Group

AGENCY: Office of the Secretary (DOT).

ACTION: Notice of open forums.

SUMMARY: This notice announces a series of eight open forums concerning the Department's development of a National Transportation Policy. The forums will be conducted by the Innovation and Human Factors Cluster Group which is concerned with the application of new technology, management, organizational structures, planning techniques, information systems and the interaction between the individual and components of all modes over the entire transportation system.

Invitation to Participate: Concerned parties and individuals are invited to notify the Cluster Group of your interest in the subject area, issues which you believe should be examined, and ways in which you or your organization could contribute to the outreach and/or policy development efforts. If you wish to express your views on policy issues or

your interest in participating in the policy development process, or if you have any questions concerning the process, please forward them in writing to the address given below. If you wish to make an oral presentation either in lieu of or in addition to a written submission of your views, please contact Mr. Al Linhares at (phone) 202–366–4208 or (FAX) 202–472–2514.

DATES: The Open Forums on Innovation and Human Factors will be held at the following locations, 9 a.m.–4:00 p.m., on these dates:

July 31, 1989, Federal Aviation Administration, Auditorium, 3rd Floor, 800 Independence Avenue, SW., Washington, DC

August 9, 1989, Northwestern University, School of Law, Arthur Rubloff Building, 375 East Chicago Avenue, Chicago, Illinois

August 11, 1989, University of Washington, Holiday Inn Crowne Center, 6th and Seneca Streets, Seattle, Washington

August 17, 1989, Arizona State University, Fiesta Inn, 2100 South Priest Drive, Tempe, Arizona

August 24, 1989, National Academy of Sciences, The Beckman Center, 100 Academy, Irvine, California

August 30, 1989, University of Miami, Hyatt Regency Miami Hotel, James L. Knight Conference Center, 400 Southeast Second Avenue, Miami, Florida

September 8, 1989, Court of International Trade, Ceremonial Conference Room, 2nd Floor, 1 Federal Plaza, New York, NY

September 11, 1989, Department of Transportation, Transportation Systems Center, 55 Broadway, Kendall Square, Cambridge, Massachusetts

ADDRESS: Send comments in writing to Innovation and Human Factors Cluster Group, Reserach and Special Programs Administration, Department of Transportation, 400 7th Street SW., Washington, DC 20590 *Attention:* Office of Research and Technology, Mail Stop DRT–1. Responses to this announcement should be received not later than close of business two (2) days prior to the Open Forum in which you wish to make an appearance.

FOR FURTHER INFORMATION CONTACT: Mr. Al Linhares, Director, Office of Research and Technology, RSPA, at the above address, or phone 202–366–4208 [FAX 202–472–2514].

SUPPLEMENTARY INFORMATION:

Overview: The Department of Transportation (DOT) is developing a national transportation policy as the critical first step in dealing with a new era where the challenge is to maintain and build upon the Nation's past achievements and continue to ensure a safe and efficient transportation system. National transportation policy must promote further economic growth, and address growing public concerns in such vital areas as environmental quality, energy, national security and international competitiveness amid changing demands, increasing congestion and capacity problems, and increasingly tight fiscal constraints.

A National Transportation Policy Statement, to be issued by the Secretary early next year, will set forth the framework through which decisions on transportation infrastructure, services and related needs can be systematically assessed and implemented during the next decade and into the 21st century.

Policy Development Outreach: During July–September the issues, positions and recommended solutions of the transportation community, including consumer, industry, labor, government and other interest groups, will be solicited and examined by six Transportation Cluster Groups which are organized largely by market areas and area headed by senior Departmental staff. The six Cluster Groups are seeking a multimodal perspective on both short- and long-range transportation issues, problems and solutions.

Participation in Policy Development: There are a number of issues and related questions which clearly are of concern to the Innovation and Human Factors Cluster Group and which must be considered in formulating recommendations for National Transportation Policy. These include the following:

A. Establish an Ongoing Process for Long-Range National Transportation Policy Development and Implementation

1. To ensure advanced *strategic planning* for the national transportation system. To recognize that our transportation system is multi-modal, and that coordinated cross-modal planning, financing, and management are essential.

a. How do we facilitate advanced strategic planning for our multi-modal transportation system?

b. How do we coordinate cross-model planning, financing and management—in the private and in the public sectors?

2. To stimulate research, development, and implementation of *innovative technology, management and organizational structures* in transportation. Define federal, state, local, and private roles in encouraging, financing, and disseminating basic and applied research.

a. What generates innovation—in technology, in management, in organizational structure—in transportation?

b. What is the appropriate role for government—Federal, state and local—in this process?

3. To emphasize *human factor considerations* for safety and efficiency throughout transportation research, development, and operation. Use human factor methods to minimize the frequency and consequences of human error in transportation accidents, and anticipate the human consequences of technological innovation.

a. What are the human factors which contribute to the safety and the efficiency of our transportation system?

b. How best do we avoid human error in transportation operations?

c. How most effectively can we anticipate the consequences for employees of technological innovation in transportation?

B. Provide the Necessary Resources for the Oncoming National Transportation System.

1. To develop the *information and knowledge base* required for informed decision-making in the nation's transportation system. Ensure that the appropriate statistical data and management information are collected, and that they are consistent, accurate, and accessible to appropriate users. Ensure that the data and information are analyzed, understood, and used for transportation planning and management.

a. What information and knowledge base is critical to informed decision-making on transportation needs?

b. Who will develop and disseminate this information?

2. To ensure adequate *human resources* for the nation's transportation system, through training, certification, and retention in commercial transportation and operator training, licensing, and recertification of individual vehicle operators in private transportation.

a. How can we best recruit, train and retain the human resources whom we will need for the transportation system of the '90's and beyond?

b. What innovative methods must we develop to assure the input and the involvement of the transportation workforce in improved mobility, efficiency and safety?

3. To develop and implement *innovative economic methods* for

transportation. Develop methods to finance transportation research, construction, maintenance, and operations and for transportation information systems and human resources. Develop economic methods to stimulate improvements in mobility, efficiency, and safety.

a. What new economic tools will we need to research, finance, construct, operate and maintain the future transportation system?

b. How should we charge consumers for the services of the commercial transportation system?

c. What should we do about the Federal trust funds?

C. Resolve Those Current Issues that will Impede Future Development.

1. To eliminate *alcohol and drugs* from the commercial transportation system and minimize alcohol and drug impairment by private citizens.

a. What are the most effective means for eliminating drug and alcohol abuse by transportation employees?

2. To renew and maintain the nation's *transportation facilities and infrastructure*—our highways, bridges, waterways, air- and sea-ports; our airplanes, trains, and ships. Define our infrastructure needs and establish how these will be met and financed.

a. Who should be responsible for renewing and for maintaining the nation's transportation facilities and infrastructure?

3. *To improve transportation mobility, efficiency, and safety through advanced technology.* Apply advanced communications and information technology such as those developed in "intelligent vehicle and highway systems", "ships of the future", and "aviation data link" programs. Use technological improvements to design safer vehicles. Develop more efficient propulsion systems through alternative fuel, linear motor, magnetic levitation, and other new technologies. Develop and implement improved management information for commercial transportation.

a. What advanced technologies appear most promising for improving mobility, efficiency and safety in transportation?

b. What should be the process—from laboratory to advanced technology to system implementation—for state-of-the-art innovations already known or being developed?

c. How should the employee representation process respond to technological innovation and the effort to achieve greater efficiency and productivity through advanced technology?

d. What should be the role of industry and of government in dealing with the problem of pollution?

Comment by all parties on these and other transportation issues is welcome.

Issued this 19th day of July, 1989, in Washington, DC.

Mark Dowis,

Executive Assistant to the Administrator, Research and Special Programs Administration.

[FR Doc. 89-17358 Filed 7-20-89; 12:11 pm]

BILLING CODE 4910-62-M

Federal Aviation Administration

Noise Exposure Map Notice and Receipt of Noise Compatibility Progam and Request for Review, Colorado Springs Municipal Airport, Colorado Springs, Colorado

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Colorado Springs Municipal Airport (COS) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing proposed noise compatibility program that was submitted for Colorado Springs Municipal Airport under Part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before January 3, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the Colorado Springs Municipal Airport noise exposure maps and the start of its review of the associated noise compatibility program is July 7, 1989. The public comment period ends July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM-611, 17900 Pacific Hwy S., C-68966, Seattle, WA 98168. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps for Colorado Springs Municipal Airport are in compliance with applicable requirements of Part 150, effective July 7, 1989. Further, FAA is reviewing a proposed noise compatability program for that airport which will be approved or disapproved on or before January 3, 1990. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted a noise exposure map that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Director of Airports for Colorado Springs Municipal Airport submitted to the FAA noise exposure maps, descriptions and other documentation which were produced during an airport Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by COS. The specific maps under consideration are Exhibits 7 and 8 in the submission. The FAA has determined that these maps for Colorado Springs Municipal Airport are in compliance with applicable requirements. This determination is effective on July 7, 1989. FAA's determination on an airport operator's noise exposure maps is limited to the determination that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise

compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on noise exposure maps submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for COS, also effective on July 7, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 3, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue, SW, Room 615, Washington, DC.

Federal Aviation Administration, Airports Division, ANM-600, 17900 Pacific Hwy S., C-68966, Seattle, Washington, 98168.

Colorado Springs Municipal Airport, Colorado Springs.

Questions may be directed to the individual named above under the heading, **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington, July 7, 1989.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 89-17259 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-13-M

Environmental Impact Statement: New Austin Airport; Manor, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The FAA is issuing this notice to advise the public that a Draft Environmental Impact Statement (DEIS) for the proposed New Austin Airport, Manor, Texas, will be available for review and comment for a period of 45 days beginning on the date of publication in the **Federal Register** of this notice of availability of the document.

ADDRESSES: Copies of the DEIS will be available at the following locations: Manor City Hall, 201 East Parsons, Manor, Texas; Texas Trust Savings Bank, Highway 290 East at Loop 212, Manor, Texas; Austin Main Library, 800 Guadalupe, Austin, Texas; and City of Austin Department of Aviation, 3600 Manor Road, Austin, Texas.

FOR FURTHER INFORMATION CONTACT: Agencies may contact: Ms. Mo Keane, Airport Environmental Specialist, ASW-612B, Federal Aviation Administration, Southwest Regional Office, Fort Worth, Texas 76193-0612. Telephone (817) 624-5606. Local citizens may contact: Ms. Leslie Sagar, Manager, Facilities Planning and Engineering, City of Austin Department of Aviation, 3600 Manor Road, Austin, Texas 78723, Telephone (512) 472-5439.

SUPPLEMENTARY INFORMATION: In 1988, the city of Austin and its consultants completed the Environmental Assessment (EA) for the proposed New Austin Airport, conducted the public hearing, and submitted the EA to the FAA. In September 1988, the FAA issued a Finding of No Significant Impact (FONSI); however, in November 1988, the EA/FONSI a suit to challenge was filed by the Sierra Club Legal Defense Fund. In March 1989, that litigation was settled. As a part of the settlement, the FAA agreed that it would replace the FONSI for the proposed New Austin Airport with an Environmental Impact Statement (EIS), except that the parties agreed that the "Austin Airport Alternative Environmental Assessment" dated July 1988 and the Austin Airport FONSI dated September 1988 may be utilized as the draft EIS (DEIS). The parties agreed that the comment period on the DEIS shall begin on the date of publication in the **Federal Register** of a notice of availability of this document by the EPA. This comment period shall run for 45 calendar days.

The DEIS consists of the July 1988 Environmental Assessment and its Appendices, the FONSI and the multi-volume studies incorporated therein by reference. These documents are available for public inspection and copying at the addresses given earlier.

The FAA intends to consult and coordinate with Federal, State, and local agencies which have jurisdiction by law or have special expertise with respect to any environmental impacts associated with the proposed project. The FAA is currently distributing the EA/FONSI, now called the DEIS, to Federal, state and local agencies to accept additional public and agency comments. After the 45 day comment period, a final EIS will be prepared.

Project Description: The City of Austin proposes to construct a new airport near the city of Manor, Texas. The proposed Federal action includes first-time airport layout plan approval, airport location approval, and construction of a new commercial service airport. The proposed development program consists of the following items: (1) Acquire approximately 3,460 acres of land; (2) construct two commercial service runways 9,000'×150', to meet aviation needs through the year 2006, and ultimately at an undetermined future date, expand one runway to 12,000' as demand requires; (3) construct parallel primary general aviation runway 5,000'×150', expand to 7,500'×150' as demand requires; (4) construct crosswind runway 3,500'×75'; (5) construct taxiways, aircraft apron areas, tie-down positions, T-hangers, and conventional hangars, expand as demand requires; (6) install instrument landing systems and associated approach light systems (ILS/ALS),

lighting and navigational aids where appropriate; (7) construct terminal area and airport-associated buildings, and auto parking areas, expand as the need develops; (8) construct airport access roadways, expand as the need develops; and (9) install fuel storage areas and appropriate fueling facilities; (10) other supporting development.

Members of the public may submit written statements to the following address: Department of Transportation, Federal Aviation Administration, Airports Division, Fort Worth, Texas 76193–0610.

Issued on June 28, 1989.

Gene L. Faulkner,

Manager, Airports Planning Branch.

[FR Doc. 89–17258 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

Change 1, Advisory Circular 29–2A, Certification of Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance.

SUMMARY: Change 1, Advisory Circular (AC) 29–2A, Certification of Transport Category Rotorcraft, consolidates FAA guidance and provides information on methods of compliance with the airworthiness standards for transport category rotorcraft. As part of the FAA effort to achieve national standardization in rotorcraft certification, it serves a ready reference for manufacturers, modifiers, FAA design evaluation engineers, flight test engineers, and engineering flight test pilots. This material has no legally binding status and must be treated as advisory only.

DATE: Change 1, AC 29–2A, was issued by the Rotorcraft Directorate, Aircraft Certification Service, in Fort Worth, Texas, on April 24, 1989.

How to order: A copy of Change 1, AC 29–2A, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or from any of the Government Printing Office bookstores located in major cities throughout the United States. Identify the publication as Change 1, AC 29–2A, Certification of Transport Category Rotorcraft, Stock Number 050–007–825–2. The cost is $9 per copy. Send a check or money order, made payable to the Superintendent of Documents, with your request. Orders for mailing to foreign countries should include an additional 25 percent of the total price to cover handling. No c.o.d. orders are accepted.

FOR FURTHER INFORMATION CONTACT: Debra H. Myers, FAA, Regulations Group, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193–0111, telephone (817) 624–5118.

Issued in Fort Worth, Texas, on July 11, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89–17257 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

Change of Name of Approved Trustee; Security Pacific Bank Washington, N.A.

Notice is hereby given that effective January 1, 1989, Rainier National Bank, Seattle, Washington, changed its name to Security Pacific Bank Washington, N.A.

Dated: July 14, 1989.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 89–17170 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

[Docket No. IP89–04; Notice 1]

Receipt of Petition for Determination of Inconsequential Noncompliance; Union City Body Co., Inc.

Union City Body Company, Inc. (Union City) of Union City, Indiana, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.101, Federal Motor Vehicle Safety Standard (FMVSS) No. 101, "Controls and Displays", on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 101 requires that the symbol for a combined windshield washing/wiping control be illuminated. Union City produced 447 X–950 walk-in vans from March 1988 through May 1989, that do not have windshield wash/wipe symbols which are illuminated. Union City supports its petition for inconsequential noncompliance with the following:

(1) The Union City Body Company always strives to be in compliance with the regulations.

(2) The wash/wipe control contained the ISO symbol.

(3) These vehicles are driven by professional route drivers who are familiar with the controls of their vehicle.

(4) The number of controls in the instrument panel area is minimized to reduce confusion.

(5) The vehicles are sold primarily for the [sic] use in the franchised mobile tool business. Most vehicles retain the same ownership through the vehicle's life.

Interested persons are invited to submit written data, views and arguments on the petition of Union City Body Company, Inc. described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 23, 1989.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 19, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89–17226 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–59–M

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1989, Pub. L. 100–457, signed into law on September 30, 1988, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register**

each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street SW., Room 9305, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The Section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Southern Califfornia Rapid Transit District Los Angeles, CA	CA-03-0342	$922,437	6-9-89
Southern Califfornia Rapid Transit District Los Angeles, CA	CA-03-0346	717,705	6-9-89
California Department of Transportation, San Jose, CA	CA-03-0328	18,199,998	6-9-89
Iowa Department of Transportation, Des Moines, IA	IA-03-0057	1,155,000	6-7-89
City of Cedar Rapids, Cedar Rapids, IA	IA-03-0058	35,364	6-7-89
Des Moines Metropolitan Transit Authority, Des Moines, IA	IA-03-0059	250,425	6-7-89
Regional Transportation Authority Commuter Rail Division, Chicago, IL	IL-03-0131-02	16,218,750	6-9-89
Regional Transportation Authority Commuter Rail Division, Chicago, IL	IL-03-0143	16,650,000	6-9-89
Regional Transit Authority, New Orlean, LA	LA-03-0044-02	1,157,216	4-19-89
Louisiana Department of Transportation and Development, New Orlean, LA	LA-03-0047	18,750,000	4-19-89
Regional Transit Authority, New Orleans, LA	LA-03-0048	1,716,146	4-19-89
Maryland State Railroad Administration, Baltimore, MD-Washington, DC	MD-03-0041	13,500,000	6-13-89
Maryland Mass Transit Administration, Baltimore, MD	MD-03-0045	2,250,000	6-9-89
Maryland Mass Transit Administration, Baltimore, MD	MD-03-0046	469,500	6-9-89
Maryland Mass Transit Administration, Baltimore, MD	MD-03-0047	2,775,000	6-9-89
Nassau County, New York, NY	NY-03-0234	3,802,125	4-28-89
City of Glens Falls, Glens Falls, NY	NY-03-0247	600,000	4-25-89
Chemung County Transit, Elmira, NY	NY-03-0252	343,750	6-9-89
City of Hudson, Hudson, NY	NY-03-0242	1,125,000	6-9-89
Niagara Frontier Transportation Authority, Buffalo, NY	NY-03-0253	300,000	6-12-89
Port Authority of Allegheny County, Pittsburgh, PA	PA-03-0204	9,999,999	5-24-89
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-03-0200	7,500,000	6-5-89
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-03-0201	15,000,000	6-5-89
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-03-0130-02	15,375,000	6-7-89
Rhode Island Department of Transportation, Providence, R.I.	RI-03-0013	75,000	5-9-89
Brazos Valley Community Action Agency, Houston, TX	TX-03-0131	126,611	6-9-89
Utah Transit Authority, Salt Lake City, UT	UT-03-0013	2,415,000	4-25-89
Utah Transit Authority, Salt Lake City, UT	UT-03-0014	1,093,500	6-16-89
Snohomish County Public Transportation Benefit Area Corporation, Seattle-Everett, WA	WA-03-0065	5,791,368	5-31-89

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Mobile Transit Authority, Mobile, AL	AL-90-X023-01	5,241	6/30/89
City of Huntsville, Huntsville, AL	AL-90-X040-00	1,035,265	6/30/89
Fayetteville/Springdale Area Transit Authority, Fayetteville-Springdale, AR	AR-90-X019-00	1,024,078	6/30/89
City of Fresno, Fresno, CA	CA-90-X330-00	3,174,827	6/28/89
Public Utilities Commission, San Francisco-Oakland, CA	CA-90-X336-00	22,116,572	6/30/89
Monterey County, Seaside-Monterey, CA	CA-90-X338-00	96,600	6/26/89
City of Norwalk, Los Angeles, CA	CA-90-X339-00	548,000	(1)
City of Commerce, Los Angeles-Long Beach, CA	CA-90-X344-00	92,800	6/28/89
Kern County Council of Governments, Bakersfield, CA	CA-90-X346-00	61,300	6/26/89
Chico Area Transit, Chico, CA	CA-90-X352-00	245,552	6/29/89
Greater Hartford Transit District, Hartford, CT	CT-90-X126-01	1,418,012	6/30/89
Greater Bridgeport Transit District, Bridgeport, CT	CT-90-X135-00	474,151	6/30/89
Middletown Transit District, Hartford, CT	CT-90-X136-00	180,000	6/30/89
Norwalk Transit District, Norwalk, CT	CT-90-X138-00	127,808	6/30/89
Housatonic Area Regional Transit District, Danbury, CT-NY	CT-90-X139-00	286,500	6/30/89
Southeastern Connecticut Regional Planning Agency, Norwich-New London, CT	CT-90-X140-00	14,000	6/30/89
Southwestern Regional Planning Commission, Norwalk, CT	CT-90-X141-00	9,600	6/30/89
Council of Governments Central Naugatuck Valley, Waterbury, CT	CT-90-X145-00	16,976	6/30/89
Housatonic Area Regional Transit District, Danbury, CT	CT-90-X146-00	73,056	(1)
Washington Metropolitan Area Transit Authority (WMATA) Washington, DC-MD-VA	DC-90-X010-02	982,844	5/26/89
Washington Metropolitan Area Transit Authority (WMATA), Washington, DC-MD- VA	DC-90-X012-01	25,633,000	6/30/89
Regional Transit System, Gainesville, FL	FL-90-X120-01	200,433	6/30/89
East Volusia County-East Volusia Transp. Authority, Daytona Beach, FL	FL-90-X123-01	310,473	6/30/89
Space Coast Area Transit, Melbourne-Cocoa, FL	FL-90-X127-00	1,262,671	6/30/89
Manatee County Board of County Commissioners, Sarasota-Bradenton, FL	FL-90-X128-00	817,913	6/30/89
Lee County Transit System, Fort Myers, FL	FL-90-X129-00	1,164,342	6/30/89
Escambia Co Bd of Commissioners, Pensacola, FL	FL-90-X130-00	1,668,450	6/30/89
City of Augusta, Augusta, GA-SC	GA-90-X044-01	96,000	6/30/89

SECTION 9 GRANTS—Continued

Transit property	Grant No.	Grant amount	Obligation date
Consolidated Government of Columbus, Columbus, GA–AL	GA–90–X050–00	1,605,078	6/30/89
City of Augusta, Augusta, GA–SC	GA–90–X051–00	1,349,159	6/30/89
Keyline Bus System, Dubuque, IA–IL	IA–90–X090–01	327,663	6/30/89
Department of Municipal Transportation, Davenport-Rock Isl–Mo, IA–IL	IA–90–X102–00	623,024	6/30/89
Keyline Bus System, Dubuque, IA–IL	IA–90–X103–00	390,281	6/30/89
Cedar Rapids Transit Department, Cedar Rapids, IA	IA–90–X104–00	705,987	6/30/89
City of Bettendorf, Bettendorf, IA	IA–90–X105–00	242,666	(1)
Des Moines Metropolitan Transit Authority, Des Moines, IA	IA–90–X106–00	239,600	6/30/89
Suburban Bus Division-Regional Transportation Authority, Chicago, IL-Northwestern IN	IL–90–X143–00	10,168,562	6/30/89
Greater Peoria Mass Transit District, Peoria, IL	IL–90–X144–00	1,000,000	6/30/89
City of Kankakee, Kankakee, IL	IL–90–X145–00	14,951	6/30/89
Bloomington Public Transportation Corporation, Bloomington-Normal, IN	IN–90–X120–00	716,252	6/30/89
South Bend Public Transportation Corporation, P.O. Box 1437, South Bend, IN–MI	IN–90–X121–00	1,544,920	6/30/89
Topeka Metropolitan Transit Authority, Topeka, KS	KS–90–X037–00	882,000	6/30/89
Wichita-Sedgwick County Metro Area Planning Department, Wichita, KS	KS–90–X038–00	51,156	6/30/89
City of Henderson, Evansville, IN–KY	KY–90–X042–00	191,795	6/30/89
Transit Authority of the Lexington-Fayette Urban County Government, Lexington-Fayette, KY	KY–90–X043–00	1,753,895	6/27/89
City of Owensboro, Owensboro, KY	KY–90–X044–00	501,055	6/26/89
City of Alexandria Municipal Bus Department, Alexandria, LA	LA–90–X091–00	1,055,496	6/30/89
Rapides Area Planning Commission, Alexandria, LA	LA–90–X093–00	68,000	6/30/89
City of Lake Charles, Lake Charles, LA	LA–90–X094–00	352,080	6/30/89
Monroe Transit System, Monroe, LA	LA–90–X095–00	527,000	6/30/89
Regional Planning Commission, New Orleans, LA	LA–90–X097–00	315,000	6/30/89
Mississippi River Bridge Authority, New Orleans, LA	LA–90–X098–00	678,131	6/30/89
Jefferson Parish, New Orleans, LA	LA–90–X099–00	1,561,278	6/30/89
St. Bernard Parish, New Orleans, LA	LA–90–X100–00	207,865	6/30/89
Merrimack Valley Regional Transit Authority, Lawrence-Haverhill, MA–NH	MA–90–X071–02	1,900,000	(1)
Pioneer Valley Transit Authority, Springfield-Chic-Holy, MA–CT	MA–90–X079–04	1,030,536	6/30/89
Worcester Regional Transit Authority, Worcester, MA	MA–90–X087–01	174,640	6/30/89
Massachusetts Bay Transportation Authority, Boston, MA	MA–90–X090–01	28,167,288	(1)
Pioneer Valley Transit Authority, Springfield-Chic-Holy, MA–CT	MA–90–X091–01	17,040	4/30/89
Merrimack Valley Regional Transit Authority, Lawrence-Haverhill, MA–NH	MA–90–X093–01	80,000	6/30/89
Cape Ann Transportation Authority, Boston, MA	MA–90–X096–0	76,100	(1)
State Railroad Administration, Baltimore, MD-Washington, DC	MD–90–X038–00	7,146,218	6/26/89
Mass Transit Administration, Maryland	MD–90–X039–00	1,412,849	6/26/89
Maine Department of Transportation, Bangor/Portsmouth-Dover-Rochester, ME	ME–90–X044–00	16,218	6/30/89
City of Niles, South Bend, IN–MI	MI–90–X114–00	135,820	6/30/89
Muskegon County Muskegon Area Transit System, Muskegon, MI	MI–90–X116–00	610,184	6/30/89
City of Saginaw, Saginaw, MI	MI–90–X118–00	1,854,954	6/30/89
Flint Mass Transportation Authority, Flint, MI	MI–90–X119–00	1,989,698	6/30/89
Kansas City Area Transportation Authority, Kansas City, MO	MO–90–X056–00	428,000	(1)
Mississippi Coast Transportation Authority, Biloxi-Gulfport, MS	MS–90–X027–00	1,148,000	6/30/89
Gulf Regional Planning Commission, Biloxi-Gulfport, MS	MS–90–X028–00	120,000	6/30/89
Great Falls Transit District, Great Falls, MT	MT–90–X023–00	790,111	6/30/89
Town of Chapel Hill, Durham, NC	NC–90–X082–01	661,120	6/30/89
City of Gastonia, Gastonia, NC	NC–90–X091–00	856,155	6/29/89
City of High Point, High Point, NC	NC–90–X092–00	2,690,120	6/27/89
City of Hickory, Hickory, NC	NC–90–X093–00	302,146	6/26/89
City of Raleigh, Raleigh, NC	NC–90–X094–00	2,003,912	6/30/89
City of Fayetteville, Fayetteville, NC	NC–90–X097–00	1,002,136	6/27/89
Omaha Metro Area Transit, Omaha, NE–IA	NE–90–X021–01	80,000	6/30/89
Omaha Metro Area Transit, Omaha, NE–IA	NE–90–X022–00	32,000	6/30/89
City of Nashua, Nashua, NH	NH–90–X018–03	64,000	6/30/89
New Jersey Transit Corporation, Northeastern, NJ	NJ–90–X026–02	53,812,000	(1)
City of Las Cruces, Las Cruces, NM	NM–90–X025–00	165,368	6/30/89
City of Santa Fe, Santa Fe, NM	NM–90–X026–00	257,577	6/30/89
Nassau County, New York, NY-Northeastern NJ	NY–90–X146–00	4,334,525	5/04/89
Nassau County, New York, NY-Northeastern NJ	NY–90–X146–01	892,420	6/30/89
New York Metropolitan Transportation Authority, New York, NY-Northeastern NJ	NY–90–X149–02	83,723,341	6/26/89
New York City Department of Transportation, New York, NY-Northeastern NJ	NY–90–X161–00	9,445,452	6/30/89
Town of Huntington, New York, NY-Northeastern NJ	NY–90–X162–00	302,116	6/30/89
Dutchess County, Poughkeepsie, NY	NY–90–X163–00	2,349,200	6/30/89
Broome County, Binghamton, NY	NY–90–X164–00	1,274,376	6/26/89
City of Rome, V.I.P. Transportation, Utica-Rome, NY	NY–90–X165–00	149,813	6/30/89
Greater Cleveland Regional Transit Authority, Cleveland, OH	OH–90–X118–00	9,893,389	6/30/89
Greater Cleveland Regional Transit Authority, Cleveland, OH	OH–90–X119–00	6,739,298	6/30/89
Canton Regional Transit Authority, Canton, OH	OH–90–X120–00	1,155,461	6/30/89
Enid Public Transportation Authority, Enid, OK	OK–90–X025–00	29,600	6/30/89
Central Oklahoma Transportation and Parking Authority, Oklahoma City, OK	OK–90–X030–00	120,000	6/30/89
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA–NJ	PA–90–X151–00	10,963,116	6/30/89
Berks Area Reading Transportation Authority, Reading, PA	PA–90–X165–00	3,132,899	6/26/89
Cumberland-Dauphin-Harrisburg-Transit Authority, Harrisburg, PA	PA–90–X166–00	1,929,337	6/27/89
Bureau of Transportation, Williamsport, PA	PA–90–X168–00	729,763	6/26/89
Lehigh and Northampton Transportation Authority, Allentown-Beth-East, PA–NJ	PA–90–X169–00	2,370,000	6/27/89
York Area Transportation Authority, York, PA	PA–90–X170–00	2,021,984	6/26/89
City of Sharon, Sharon, OH–PA	PA–90–X171–00	350,600	6/27/89
Transportation and Motor Buses for Public Use Authority, Altoona, PA	PA–90–X172–00	783,102	6/26/89
Erie Metropolitan Transit Authority, Erie, PA	PA–90–X173–00	1,177,059	6/26/89
Red Rose Transit Authority, Lancaster, PA	PA–90–X174–00	3,154,875	6/29/89
Department of Transportation and Public Works, San Juan, PR	PR–90–X011–04	1,134,400	6/30/89

SECTION 9 GRANTS—Continued

Transit property	Grant No.	Grant amount	Obligation date
Municipality of Canovanas, San Juan, PR	PR-90-X032-02	131,200	6/30/89
Municipality of Gurabo, Caguas, PR	PR-90-X046-00	59,840	6/30/89
Rhode Island Department of Transportation, Providence-Paw-War, MA-RI	RI-90-X008-01	6,223	6/30/89
Rhode Island Department of Transportation, Providence-Paw-War, MA-RI	RI-90-X013-00	4,156,280	6/30/89
Pee Dee Regional Transit Authority, Florence, SC	SC-90-X026-00	268,664	6/30/89
Greenville Transit Authority, Greenville, SC	SC-90-X027-00	895,442	6/30/89
Spartanburg County Government, Spartanburg, SC	SC-90-X028-00	476,771	[1]
City of Johnson City, Johnson City, TN	TN-90-X073-00	320,000	6/26/89
Jackson Transit Authority, Jackson, TN	TN-90-X074-00	278,954	6/30/89
City of Clarksville, Clarksville, TN-KY	TN-90-X075-00	525,575	6/27/89
City of Galveston, Galveston, TX	TX-90-X150-00	748,000	6/30/89
City of Amarillo, Amarillo, TX	TX-90-X152-00	1,425,650	6/30/89
Via Metropolitan Transit Authority, San Antonio, TX	TX-90-X153-00	11,644,912	6/30/89
City of Port Arthur, Port Arthur, TX	TX-90-X156-00	492,000	6/30/89
Peninsula Transportation District Commission, Newport News-Hampton, VA	VA-90-X065-00	312,655	6/26/89
Jaunt, Inc., Charlottesville, VA	VA-90-X066-00	92,901	6/26/89
Snohomish County Public Transportation Benefit Area Corporation, Seattle-Everett, WA	WA-90-X096-00	1,473,828	6/30/89
Whatcom Transportation Authority, Bellingham, WA	WA-90-X099-00	630,600	[1]
Green Bay Transit System, Green Bay, WI	WI-90-X105-00	1,446,708	6/30/89
Oshkosh Transit System, Oshkosh, WI	WI-90-X107-00	539,727	6/30/89
City of Racine, Racine, WI	WI-90-X107-00	1,738,889	6/30/89
City of Sheboygan, Sheboygan, WI	WI-90-X108-00	496,611	6/30/89
Milwaukee County Transit System, Milwaukee, WI	WI-90-X109-00	10,928,915	6/30/89
City of Kenosha, Kenosha, WI	WI-90-X110-00	1,017,582	6/30/89
City of LaCross, LaCross, WI	WI-90-X111-00	475,001	[1]
City of Chippewa Falls, Eau Claire, WI	WI-90-X112-00	68,334	6/30/89
Mid-Ohio Valley Transit Authority, Parkersburg, OH-WV	WV-90-X032-00	385,958	6/26/89
Tri-State Transit Authority, Huntington-Ash, WV-KY-OH	WV-90-X033-00	700,000	6/26/89

[1] The Section 9 grants shown without an obligation date are awaiting 13(c) certification from the Department of Labor. After receipt of the certification the grants will be obligated.

Issued on July 18, 1989.

Roland J. Mross,

Deputy Administrator.

[FR Doc. 89-17227 Filed 7-21-89; 8:45 am]

BILLING CODE 4910-57-M

Sunshine Act Meetings

Federal Register
Vol. 54 No. 140
Monday, July 24, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:34 p.m. on Tuesday, July 18, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider: (1) An administrative enforcement proceeding; (2) a notice of an individual's proposed dual service as a director of two nonaffiliated depository institutions pursuant to section 205 of the Depository Institution Management Interlocks Act; (3) matters relating to the possible failure of certain insured banks; (4) matters ralating to assistance agreements pursuant to section 13(c) of the Federal Deposit Insurance Act; and (5) matters concerning the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptaroller 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 by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshsine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: July 129, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-17349 Filed 7-20-89; 8:45 am]

BILLING CODE 6714-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of July 24, 31, August 7, and 14, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of July 24

Wednesday, July 26

10:00 a.m.
Briefing on Integration of Policy Statements for Severe Accidents, Advanced Reactors, Safety Goals, and Standardization (Public Meeting)
2:00 p.m.
Briefing on Proposed 1989 Waste Confidence Decision (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 31—Tentative

Tuesday, August 1

10:00 a.m.
Briefing on Status of EPRI Design Requirements Document for Advanced Light Water Reactors (Public Meeting)

Wednesday, August 2

10:00 a.m.
Briefing on Status of Nine Mile Point-1 (Public Meeting)

Thursday, August 3

2:00 p.m.
Briefing on NRC Thermal-Hydraulic Research Program (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 7—Tentative

Thursday, August 10

2:00 p.m.
Periodic Briefing by Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, August 11

10:00 a.m.
Discussion of Full Power Operating License for Limerick-2 (Public Meeting)

Week of August 14—Tentative

Tuesday, August 15

10:00 a.m.
Periodic Briefing on EEO Program (Public Meeting)

Wednesday, August 16

10:00 a.m.
Briefing on Status of Calvert Cliffs (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

July 19, 1989.

[FR Doc. 89-17387 Filed 7-20-89; 2:10 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of July 24, 1989.

An open meeting will be held on Monday, July 24, 1989, at 9:30 a.m. A closed meeting will be held on Tuesday, July 25, 1989, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Monday, July 24, 1989, at 9:30 a.m., will be:

The Commission is hosting a roundtable on commission dollar practices and payments for order flow. The agenda will include topics such as the current nature and extent of the use of commission dollars to obtain research products; the effects of these commission dollar arrangements on execution liquidity and research availability; current disclosure practices concerning commission dollar practices; commission dollar arrangements employed by pension plan sponsors; the pervasiveness of payment for order flow practices; the economic incentives in connection with payment for order flow; and issues raised by payment for order flow arrangements. The participants will include representatives from the New York Stock Exchange, National Association of Securities Dealers, U.S. Department of Labor, U.K. Securities and Investments Board, and the broker-dealer, investment advisory, and banking communities. For further information, please contact Henry E. Flowers at (202) 272–2728 or Jill C. Finder at (202) 272–2416.

The subject matter of the closed meeting scheduled for Tuesday, July 25, 1989, at 10:00 a.m., will be:

Formal order of investigation.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Reports of investigation.
Opinion.

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: Kevin Fogarty at (202) 272–2300.

Jonathan G. Katz,

Secretary.

July 19, 1989.

[FR Doc. 89–17351 Filed 7–20–89; 1:56 pm]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1418]

TIME AND DATE: 10 a.m. (EDT), July 26, 1989.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on June 21, 1989.

Discussion Item

1. Preliminary Rate Review.

Action Items

New Business

A—Budget and Financing

A1. Modification to the Capital Budget Financed from Appropriations and Nonpower Proceeds for Fiscal Year 1989 for Nickajack Dam Safety Modifications.

C—Power Items

C1. Renewal Power Contract with Cullman, Alabama.

C2. Amendment to Settlement Provisions for Emergency Assistance with Appalachian Power Company.

E—Real Property Transactions

E1. Grant of Permanent Easement Affecting Approximately 1.36 Acres of Land on Blue Ridge Reservoir in Fannin County, Georgia.

E2. Grant of Permanent Industrial Easement Affecting Approximately 47 Acres of Land on Wheeler Reservoir in Morgan County, Alabama.

E3. Sale of Approximately 20 Acres of Power Property on Wheeler Reservoir in Morgan County, Alabama.

E4. Sale of Permanent Easement Affecting Approximately 19.5 Acres of Land on Kentucky Reservoir in Livingston County, Kentucky.

F—Unclassified

*F1. Relocation Services Contract with Empire of America Relocation Services, Inc.

*F2. Amendment to the Rules and Regulations of the TVA Retirement System Regarding Limited Time Period for Immediate Special Service Retirement Allowance for Retirement System Members Voluntarily Leaving TVA.

F3. Supplement No. 4 to Contract No. TV–68260A with Seismic Qualification Utility Group.

F4. Supplement No. 7 to Contract No. TV–72983A with Equifax Services, Inc.

F5. Contract No. TV–78259T with Alabama Department of Economic and Community Affairs, Office of Employment and Training.

F6. Supplement No. 3 to Contract No. TV–72077A with the U.S. Department of Agriculture, Forest Service, to Conduct Exposure Experiments at Whitetop Mountain to Determine Cause of Red Spruce Decline in High Elevations of Southern Appalachians.

F7. Supplement No. 1 to Contract No. TV–67747A with City of Bristol Tennessee for Additional Waterline Improvements.

F8. Agreement with the U.S. Department of the Army, Corps of Engineers, to Provide Mussel Relocation Services.

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*Items approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479–4412.

Dated: July 19, 1989.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 89–17318 Filed 7–20–89; 9:38 am]

BILLING CODE 8120–01–M

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Meeting

July 19, 1989.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–4109), 5 U.S.C. 552b:

DATE AND TIME: July 26, 1989, 8:30 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Closed.

MATTER TO BE CONSIDERED: (1) Transcontinental Gas Pipe Line Corporation, Docket No. IN89–1–000 (2) Wolverine Power Corporation, Docket No. E–7319–000

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357–8400.

Lois D. Cashell,

Secretary.

[FR Doc. 89–17403 Filed 7–20–89; 3:54 pm]

BILLING CODE 6717–01–M

FEDERAL ENERGY REGULATORY COMMISSION

July 19, 1989.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–49), U.S.C. 552B:

DATE AND TIME: July 26, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 901st Meeting—July 26, 1989, Regular Meeting (10:00 a.m.)

CAP–1.
Project No. 6623–001, Eric R. Jacobson and Hydro-West, Inc.
CAP–2.
Project Nos. 10601–001, 10602–001 and 10603–001, Wolverine Power Corporation
CAP–3.

Project No. 9885–004, Environmental Energy Company
CAP–4.
Omitted
CAP–5.
Docket No. UL88–12–002, Central Vermont Public Service Corporation
CAP–6.
Project No. 5223–009, International Falls Power Company
CAP–7.
Docket No. ER89–184–002, Consumers Power Company
CAP–8.
Docket No. ER86–721–006, Central Power & Light Company
CAP–9.
Docket No. ER89–334–001, Southern Company Services, Inc.
CAP–10.
Docket Nos. ER85–785–012, ER86–387–002 and ER86–526–002, Wisconsin Electric Power Company
CAP–11.
Docket No. ER81–187–008, Public Service Company of New Mexico
CAP–12.
Docket No. ER80–573–004, ER84–604–008 and ER85–477–002, Southwestern Public Service Company
CAP–13.
Docket No. ER83–726–003, Boston Edison Company
CAP–14.
Docket No. ER84–31–000, Central and South West Services, Inc.
CAP–15.
Docket Nos. ER88–630–002, 003, ER88–631–002, 003, ER89–38–002 and 003, New England Power Company
CAP–16.
Docket No. ER88–540–003, Louisiana Power & Light Company
CAP–17.
Docket No. EL89–32–000, Torco Energy Marketing, Inc.
CAP–18.
Docket No. QF88–418–000, CNG Energy Company
CAP–19.
Docket No. QF89–198–000, Kalaeloa Partners, L.P.

Consent Miscellaneous Agenda

CAM–1.
Docket No. RM89–6–000, Establishment of Deadlines for First Sellers To Make and Report Refunds
CAM–2.
Docket No. GP87–37–001, Phillips Petroleum Company v. Natural Gas Pipeline Company of America
CAM–3.
Docket No. GP88–26–000, Northern Pump Company, Danner No. A–1 Well
CAM–4.
Docket No. GP88–17–000, El Paso Natural Gas Company
CAM–5.
Docket No. GP80–43–009 (Phase I), Northern Natural Gas Company, Division of InterNorth, Inc.
CAM–6.
Docket No. FA86–19–002 (Phase II), System Energy Resources, Inc.
Docket No. FA85–58–000, Arkansas Power & Light Company
Docket No. FA85–65–000, Mississippi Power & Light Company
Docket No. FA86–63–000, Louisiana Power & Light Company
Docket No. FA87–23–000, New Orleans Public Service, Inc.

Consent Gas Agenda

CAG–1.
Docket No. RP89–200–000, Pacific Gas Transmission Company
CAG–2.
Docket No. RP89–203–000, Southern Natural Gas Company
CAG–3.
Docket No. RP89–198–000, Tennessee Gas Pipeline Company
CAG–4.
Docket No. RP88–180–006, Trunkline Gas Company
CAG–5.
Docket No. RP89–196–000, Northwest Pipeline Corporation
CAG–6.
Docket No. RP89–201–000, Questar Pipeline Company
CAG–7.
Docket No. TA89–1–61–000, Bayou Interstate Pipeline System
CAG–8.
Docket No. TA89–1–49–000, Williston Basin Interstate Pipeline Company
CAG–9.
Docket No. TA89–1–52–000, Western Gas Interstate Company
CAG–10.
Docket No. TA89–1–29–000, Transcontinental Gas Pipeline Corporation
CAG–11.
Docket No. TM89–4–29–000, Transcontinental Gas Pipeline Corporation
CAG–12.
Docket No. TM89–13–20–000, Algonquin Gas Transmission Company
CAG–13.
Docket No. TM89–3–18–000, Texas Gas Transmission Corporation
CAG–14.
Docket No. TQ89–3–23–000, Eastern Shore Natural Gas Company
CAG–15.
Docket Nos. RP89–132–001 and 003, El Paso Natural Gas Company
CAG–16.
Docket No. RP89–43–000, Valero Interstate Transmission Company
CAG–17.
Docket Nos. RP88–96–000, RP88–210–000, 004 and RP89–174–000, Southern Natural Gas Company
CAG–18.
Docket Nos. RP88–198–004 and 005, Transwestern Pipeline Company
CAG–19.
Docket No. TA89–1–28–000, Panhandle Eastern Pipe Line Company
CAG–20.
Docket Nos. TA89–1–37–000 and 001, Northwest Pipeline Corporation
CAG–21.
Docket No. TA89–1–37–001, Northwest Pipeline Corporation
CAG–22.
Docket Nos. CP88–587–001, 002, 003, TA88–4–12–002 and RP88–194–000, Distrigas Corporation and Distrigas of Massachusetts Corporation
CAG–23.
Docket Nos. RP89–8–000 and 001, Pacific Interstate Transmission Company
CAG–24.
Docket No. RP89–58–000, Bear Creek Storage Company
CAG–25.
Docket No. RP89–57–002, El Paso Natural Gas Company
CAG–26.
Docket Nos. RP89–29–006 and RP88–228–022, Tennessee Gas Pipeline Company
CAG–27.
Docket Nos. RP89–155–001 and 002, United Gas Pipeline Company
Docket Nos. RP89–168–001 and 002, ANR Storage Company
CAG–28.
Docket No. RP88–187–018, Columbia Gas Transmission Corporation
CAG–29.
Docket No. RP89–40–004, Williams Natural Gas Company
CAG–30.
Docket Nos. RP89–163–002, RP88–68–015 and RP87–7–056, Transcontinental Gas Pipe Line Corporation
CAG–31.
Docket No. TQ89–4–63–001, Carnegie Natural Gas Company
CAG–32.
Docket No. TQ89–2–28–001, Panhandle Eastern Pipe Line Company
CAG–33.
Docket Nos. TM89–2–26–001 and TM89–3–26–001, Natural Gas Pipeline Company of America
CAG–34.
Docket No. CP88–391–002, Transcontinental Gas Pipe Line Corporation
CAG–35.
Docket No. TA89–7–51–002, Great Lakes Gas Transmission Company
CAG–36.
Docket Nos. CP89–470–001 and CP88–522–006, Tennessee Gas Pipeline Company
CAG–37.
Docket Nos. CP88–434–001 and RP88–185–001, El Paso Natural Gas Company
CAG–38.
Omitted
CAG–39.
Docket No. RP87–7–000, Transcontinental Gas Pipe Line Corporation
CAG–40.
Docket No. RP87–15–001, Trunkline Gas Company
CAG–41.
Docket No. RP89–70–002, Stingray Pipeline Company
CAG–42.
Docket No. RP89–145–003, Transcontinental Gas Pipe Line Corporation
CAG–43.
Docket Nos. RP81–85–003, RP83–93–019 and FA85–1–002, Trunkline LNG Company and Trunkline Gas Company
CAG–44.
Docket Nos. ST89–2645–000, ST88–3308–000 and ST88–4082–000, The Tekas Corporation
CAG–45.

Docket Nos. ST89-2401-000, ST89-2402-000 and ST89-2403-000, Utah Gas Service Company

CAG-46.
Docket No. ST88-5804-000, Acacia Natural Gas Company

CAG-47.
Docket No. ST89-2595-000, Southern Gas Pipeline Company

CAG-48.
Docket No. CP89-738-001, Interstate Power Company

CAG-49.
Docket No. CP87-458-002, Arkla Energy Resources, a Division of Arkla, Inc.

CAG-50.
Docket Nos. CP87-5-005, CP87-92-005, Texas Eastern Transmission Corporation
Docket Nos. CP88-197-003, CP88-388-003, CP87-312-005, CP87-313-002, CP87-314-002, CP88-128-003, CP88-197-003 and CP88-388-003, CNG Transmission Corporation
Docket No. CP87-554-002, Algonquin Gas Transmission Company
Docket No. CP89-6-002, Transcontinental Gas Pipe Line Corporation

CAG-51.
Docket Nos. CP89-281-002 and CP89-817-001, Panhandle Eastern Pipe Line Company

CAG-52.
Omitted

CAG-53.
Docket Nos. CP89-7-000 and 001, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP88-194-000 and 001, National Fuel Gas Supply Corporation and Penn-York Energy Corporation
Docket Nos. CP88-195-000, 001 and 002, PennEast Gas Services Company, CNG Transmission Corporation and Texas Eastern Transmission Corporation

CAG-54.
Docket No. CP88-542-000, Great Lakes Gas Transmission Company

CAG-55.
Docket Nos. CP88-574-000 and CP88-779-000, CNG Transmission Corporation

CAG-56.
Docket No. CP89-704-000, United Gas Pipe Line Company

CAG-57.
Docket No. CP89-1582-000, National Fuel Gas Supply Corporation

CAG-58.
Docket No. CP89-1118-000, Williston Basin Interstate Pipeline Company

CAG-59.
Docket No. CP80-499-009, Williams Natural Gas Company

CAG-60.
Omitted

CAG-61.
Docket Nos. CP87-389-003, CP88-225-002 and CP88-759-001, National Fuel Gas Supply Corporation

CAG-62.
Docket No. CP89-129-000, Williams Natural Gas Company

CAG-63.
Omitted

CAG-64.
Docket No. CP89-252-000, Mississippi Valley Gas Company v. Gulf Fuels, Inc. and ANR Pipeline Company

CAG-65.
Docket No. CP89-515-001, Green Canyon Pipe Line Company

CAG-66.
Docket Nos. ST88-2555-003, ST88-2905-000, ST88-3337-000, ST88-4985-000, ST89-229-000, ST89-1708-000 and ST89-1775-000, Louisiana Intrastate Gas Corporation

CAG-67.
Docket No. CP73-184-005, Colorado Interstate Gas Company, a Division of Colorado Interstate Company
Docket No. CI73-485-004, CIG Exploration, Inc.

CAG-68.
Docket No. CP89-1043-000, KN Energy, Inc.

CAG-69.
Docket No. RP89-73-001, Pelican Interstate Gas System

CAG-70.
Docket Nos. RP86-33-012 and RP86-91-008, Midwestern Gas Transmission Company

I. Licensed Project Matters

P-1.
Docket No. EL86-24-000, Municipal Electric Utilities Association of New York State v. Power Authority of the State of New York
Docket No. EL86-29-000, Connecticut Municipal Electric Energy Cooperative and Massachusetts Municipal Wholesale Electric Company v. Power Authority of the State of New York. Order on initial decision concerning the appropriate allocation of preference power.

II. Electric Rate Matters

ER-1.
Docket Nos. ER89-401-000, Citizens Power & Light Corporation. Order on rate schedule for market-oriented rates.

ER-2.
Docket Nos. ER85-720-001 and 010, Connecticut Light and Power Company
Docket Nos. ER85-707-001 and 007, Western Massachusetts Electric Company
Docket Nos. ER85-689-001 and 008, Holyoke Water Power Company and Holyoke Power & Electric Company. Opinion on initial decisions concerning contract demand issues and prudence.

ER-3.
Docket No. QF87-274-003, Union Carbide Corporation. Order on remand.

ER-4.
Docket No. QF86-722-001, Penntech Papers, Inc. Order on application for recertification as qualifying cogeneration facility.

ER-5.
Docket No. QF89-256-000, Palisades Generating Company. Order accepting agreement for filing, denying requests for declaratory rulings, granting and denying waivers, and establishing hearing procedures.

Miscellaneous Agenda

M-1.
Docket No. RM86-6-007, Construction Work in Progress. Order on remand.

M-2.
Reserved

M-3.
Reserved

M-4. (A)
RM87-5-001, Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines. Order on rehearing.

M-4. (B)
Docket No. RM87-5-002, High Island Offshore System, Trailblazer Pipeline Company, Sea Robin Pipeline Company, Great Lakes Gas Transmission Company, Arkla, Inc., Consolidated Natural Gas Company, Interstate Natural Gas Association of America, Maryland Peoples Counsel, Natural Gas Pipeline Company of America and United Gas Pipeline Company
Docket No. MG88-36-000, U-T Offshore System
Docket No. MG88-43-000, Kentucky West Virginia Gas Company and Equitrans, Inc.
Docket No. MG88-41-000, Superior Offshore Pipeline Company and Texas Sea Rim Pipeline, Inc.
Docket No. MG88-35-000, Northern Border Pipeline Company
Docket No. MG88-34-000, Canyon Creek Compression Company
Docket No. MG88-38-000, Columbia Gas Transmission Corporation
Docket No. MG88-39-000, Enron Interstate Pipelines
Docket No. MG88-30-000, Great Lakes Gas Transmission Company
Docket No. MG88-21-000, High Island Offshore System
Docket No. MG88-43-000, Kentucky West Virginia Gas Company
Docket No. MG88-4-000, Mid Louisiana Gas Company
Docket No. MG88-8-000, MIGC, Inc.
Docket No. MG88-25-000, Northwest Pipeline Corporation
Docket No. MG88-10-000, Ohio River Pipeline Corporation
Docket No. MG88-40-000, Pelican Interstate Gas System
Docket No. MG88-27-000, Sea Robin Pipeline Company
Docket No. MG88-29-000, South Georgia Natural Gas Company
Docket No. MG88-42-000, Texas Gas Transmission Corporation
Docket No. MG88-32-000, Trailblazer Pipeline Company
Docket No. MG88-28-000, United Gas Pipe Line Company
Docket No. MG88-37-000, Valero Interstate Transmission Company
Docket No. MG88-46-000, Valley Gas Transmission, Inc.
Docket No. MG88-9-000, West Texas Gathering. Order on clarification of Order No. 497.

I. Pipeline Rate Matters

RP-1. (A)
Docket No. PL89-2-001, Interstate Natural Gas Pipeline Rate Design
Docket No. RP89-75-003, Black Marlin Pipeline Company
Docket No. RP89-86-000, Chandeleur Pipeline Company
Docket No. RP88-211-007, CNG Transmission Corporation

Docket No. RP86–168–015, Columbia Gas Transmission Corporation
Docket No. RP86–167–011, Columbia Gulf Transmission Company
Docket No. RP88–44–012, El Paso Natural Gas Company
Docket No. RP89–50–003, Florida Gas Transmission Company
Docket No. RP89–37–000, High Island Offshore System
Docket No. RP89–65–000, Inland Gas Company, Inc.
Docket Nos. RP86–52–000, RP89–146–000 and RP89–61–000, Kentucky West Virginia Gas Company
Docket Nos. RP87–86–011, RP86–86–11–008, RP85–11–025 (Phase II), RP89–110–000 and RP89–111–000, KN Energy, Inc.
Docket Nos. RP89–35–004 and RP89–36–003, Midwestern Gas Transmission Company
Docket Nos. RP89–49–000, National Fuel Gas Supply Corporation
Docket No. RP89–33–005, Northern Border Pipeline Company
Docket No. RP88–259–015, Northern Natural Gas Company
Docket No. RP88–47–022, Northwest Pipeline Corporation
Docket No. RP88–262–006, Panhandle Eastern Pipe Line Company
Docket No. RP88–227–017, Pauite Pipeline Company
Docket No. RP89–73–000, Pelican Interstate Gas System
Docket No. RP88–181–000, Sea Robin Pipeline Company
Docket No. RP88–228–021, Tennessee Gas Pipeline Company
Docket No. RP88–67–013, Texas Eastern Gas Transmission Corporation
Docket No. RP87–7–055, Transcontinental Gas Pipe Line Corporation
Docket No. RP89–48–002, Transwestern Pipeline Company
Docket No. RP88–180–015, Trunkline Gas Company
Docket No. RP89–38–000, U–T Offshore System
Docket No. RP88–256–001, West Texas Gas, Inc.
Docket No. RP89–67–000, West Texas Gathering Company
Docket No. RP87–33–000, Williams Natural Gas Company
Docket Nos. RP88–197–000, RP88–236–000 and RP89–34–000, Williston Basin Interstate Pipeline Company. Order on rehearing

RP–1. (B)
Docket No. RP89–34–004, Williston Basin Interstate Pipeline Company. Order concerning application of rate design policy statement.

RP–1. (C)
Docket No. RP88–211–005, CNG Transmission Corporation. Rehearing of suspension order concerning appropriate methodology for reflecting discounted transportation volumes and revenues in designing rates.

RP–1. (D)
Docket No. RP89–161–001, ANR Pipeline Company. Rehearing of suspension order concerning the D–2 Charge, implementation of seasonable rates and length of suspension.

RP–2.
Docket No. RP89–45–001, ANR Pipeline Company. Order on rehearing concerning the passthrough of take-or-pay non-cash consideration and transportation discounts and credits.

RP–3.
Docket Nos. CP82–487–014, 015, RP–84–62–000, RP84–93–000 (Phase II), CP82–487–001, 016, TA84–2–49–000 and TA85–1–49–000 (Phase III), Williston Basin Interstate Pipeline Company. Order concerning initial decisions on gas purchase contracts being imprudent or abusive, rate of return and rate base treatment of 1983 net injections into storage.

RP–4.
Docket Nos. RP85–177–061, RP88–67–012 and CP88–136–005, Texas Eastern Transmission Corporation. Order on compliance filing concerning gas inventory charge and firm receipt point capacity.

RP–5.
Docket No. CP88–99–000, Transwestern Pipeline Company. Order on compliance filing concerning gas inventory charge.

II. Producer Matters

CI–1.
Reserved

III. Pipeline Certificates Matters

CP–1.
Docket No. CP88–136–007, Texas Eastern Transmission Corporation. Order on application to amend blanket certificate to implement a capacity brokering program.

Lois D. Cashell,

Secretary.

[FR Doc. 89–17404. Filed 7–21–89; 3:54 pm]

BILLING CODE 6717–01–M

FEDERAL ELECTION COMMISSION

Note: This document was incorrectly published on Thursday, July 20, 1989 (54 FR 30502) and is correctly published below.

Date & Time: *TUESDAY, JULY 25, 1989 at 10:00 A.M.*

Place: 999 E. Street NW., Washington, DC.

Status: This meeting will be closed to the public.

Items to be Discussed:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

Date & Time: *THURSDAY, JULY 27, 1989, at 10:00 A.M.*

Place: 999 E. Street NW., Washington, DC (Ninth Floor).

Status: This meeting will be open to the public.

Matters to be Considered:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1989–11—Messrs. Mac Asbill, Jr. and Wright H. Andrews, Jr. on behalf of Sutherland, Asbill & Brennan.
Draft Advisory Opinion 1989–12—Edward D. Feigenbaum regarding an Indiana statute that prohibits political contributions by and the awarding of contracts to certain vendors.
Regulations—Explanation and Justification of the Affiliation and Earmarking Regulations (11 CFR §§ 110.3–110.6).
ADP Project Status Report
Administrative Matters.

Person to Contact for Information: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Signed:

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89–17167 Filed 7–18–89; 2:50 pm]

BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 54, No. 140
Monday, July 24, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

34 CFR Part 303

RIN 1820-AA49

Early Intervention Program for Infants and Toddlers With Handicaps

Correction

In rule document 89-14858 beginning on page 26306 in the issue of Thursday, June 22, 1989, make the following corrections:

1. On page 26306, in the first column, under **EFFECTIVE DATE**, in the ninth line "$303.301" should read "§ 303.301".

2. On page 26309, in the third column, in the table-of-contents entry for § 303.112 the word "Public" was misspelled.

3. On the same page, in the same column, in the entry for § 303.167 "(SCPD)" should read "(CSPD)".

§ 303.340 [Corrected]

4. On page 26321, in the first column, in § 303.340, the first paragraph should be designated as "(c)".

§ 303.342 [Corrected]

5. On the same page, in the second column, in § 303.342, in the second paragraph of the **Note**, in the fourth line, "repeated" was misspelled.

§ 303.361 [Corrected]

6. On page 26323, in the third column, in § 303.361(d)(1), in the fifth line, "discipline" was misspelled.

§ 303.603 [Corrected]

7. On page 26329, in the first column, in § 303.603(b)(1), in the second line, "they" was misspelled.

Appendix A—[Corrected]

8. On page 26330, in the first column, the last line should read "intended as an expression of Congressional intent that private".

9. On the same page, in the second column, the last line should read "purpose of making grants under this part".

10. On the same page, in the third column, the last line should read "availability of advocacy services, and (3) assuring that case management is an"

11. On page 26339, in the first column, in the eighth paragraph, in the sixth line, "for" should read "and".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 88-139; FCC 89-180]

Reorganization and Deregulation of Part 97, Rules Governing the Amateur Radio Service

Correction

In rule document 89-14433 beginning on page 25857 in the issue of Tuesday, June 20, 1989, make the following correction:

§ 97.307 [Corrected]

On page 25870, in the first column, in § 97.307(f)(3) in the first line, "date" should read "data".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

[Revision 3]

RIN 3245-AB77

Surety Bond Guarantee Regulations

Correction

In rule document 89-10520 beginning on page 19544 in the issue of Monday, May 8, 1989, make the following correction:

§ 115.3 [Corrected]

On page 19547, in the 3rd column, in § 115.3(a), in the 18th line, "big" should read "bid".

BILLING CODE 1505-01-D

federal register

Monday
July 24, 1989

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 602

Guidelines for Fishery Management Plans; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 602

[Docket No. 81011-9132]

Guidelines for Fishery Management Plans

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this rule to revise the advisory guidelines for two of the seven national standards for fishery conservation and management set forth in section 301(a) of the Magnuson Fishery Conservation and Management Act (the Act). Section 301(a) requires that all fishery management plans (FMPs) and implementing regulations be consistent with the standards. Section 301(b) of the Act requires the Secretary of Commerce (Secretary) to issue advisory guidelines, based on the standards, to assist in the development and review of FMPs, their amendments, and implementing regulations. The guidelines are intended to improve the quality of FMPs by providing comprehensive guidance for Regional Fishery Management Councils (Councils) to use in developing FMPs and amendments, and to produce a more uniform understanding of the Secretary's basis for FMP review and implementation. The original guidelines were issued in February 1983.

This rule revises the guidelines for national standards 1 and 2 only. Standard 1, as set forth in the Act, requires conservation and management measures to prevent "overfishing" while achieving "optimum yield" (OY) on a continuing basis. Standard 2 requires conservation and management measures to be based on the best scientific information available.

The Act does not define overfishing, nor do most FMPs. Further, the biological data necessary to determine overfishing has sometimes been unavailable. As a result, Councils have often made decisions based primarily on short-term economic and political considerations, with lesser emphasis placed on the long-term viability of the fishery resource or the fishing industry. In order to assure that the Councils give appropriate decisional weight to long-term viability, the revised guidelines stipulate that: (1) Each existing and future FMP specify, to the maximum extent possible, an objective and measurable definition of overfishing for each managed stock or stock complex; with an analysis of how the definition was determined and how it relates to biological potential; and (2) the Secretary is responsible for assuring that a Stock Assessment and Fishery Evaluation (SAFE) report is prepared and updated as necessary, for each fishery. The SAFE report summarizes the best available biological, economic, social, and ecological information concerning the past, present, and potential condition of the stock(s) and fishery being managed.

The short-term effect of the revised guidelines will be that more restrictive regulation will be necessary in those fisheries where stocks are approaching or have reached an overfished condition as defined in the FMP. The intended long-term effect is to assure that the reproductive capacity of any managed stock is not jeopardized, that depleted stocks are rebuilt, and that economically viable future harvests on a continuing basis are possible.

To provide the proper context and as a convenience to the reader, this final rule republishes the guidelines for the seven national standards in their entirety, along with an updated Appendix containing explanatory material.

EFFECTIVE DATE: August 23, 1989.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, telephone: 301-427-2334.

SUPPLEMENTARY INFORMATION:

Background

Revision of the guidelines for national standards 1 and 2 was precipitated, in part, by recommendations of the NOAA Fishery Management Study (the Study), commissioned by the Under Secretary of Commerce for Oceans and Atmosphere and undertaken to assess and improve the Magnuson Act fishery management system. In June 1986, the Study recommended that NOAA assume the responsibility for determining the biologically acceptable catch (ABC) for each managed fishery. By ABC the Study meant the total allowable removals from the resource that would maintain a healthy and productive resource into the future. As used in this context, the ABC would be the maximum allowable quota for the species or species complex in the fishery. It should be noted that this is different from the manner in which the term ABC is used in the guidelines for national standard 1 as revised (§ 602.11). The Study's intent was that stocks be maintained at some level above that which protects the minimum spawning stock from recruitment overfishing. The Study sought a "conservation standard" such that stocks are not continually driven to, or maintained at, the threshold of overfishing.

In April 1987, NOAA distributed for Council/National Marine Fisheries Service (NMFS) pre-publication review and comment a draft revision of the uniform standards governing the organization, practices, and procedures of the Councils and the guidelines for FMPs. That draft revision included a section providing that a maximum fishing mortality (MFM) be established that would maintain the current spawning stock size with consideration of the variabilities in spawning stock estimates, and that ABC be specified so as not to exceed MFM. Again, ABC was to be used as a maximum allowable annual quota for the fishery. Council and NOAA comments concerning the MFM proposal made it clear that this proposal was not universally applicable for a variety of reasons.

Accordingly, in August 1987, NOAA convened a technical workshop of NOAA fishery scientists and managers, and academic scientists recommended by the Councils, to address the Study's recommendations for a conservation standard and the comments on the April draft. In October 1987, to allow time for a thorough examination of the issues raised by the workshop, the decision was made to separate the revisions concerning the conservation standard from the revisions of the uniform standards governing the organization, practices, and procedures of the Councils. In the spring of 1988, a series of Council/NMFS regional workshops was held to discuss the feasibility of the conservation standard concept, using as a basis for discussion the proposed revision of guidelines for national standards 1 and 2 produced by the August 1987 technical workshop. Following the workshops, the proposed revision was further modified as the basis for discussion at a Council Chairmen's meeting in July 1988.

The proposed rule, published at 53 FR 53031 on December 30, 1988, thus constituted the fourth revision—the product of intensive and iterative Council/NOAA review, debate, and drafting. This internal process helped identify, reduce, or eliminate many policy and operational problems before publication of the regulatory proposal. Public comments were invited on the proposed rule until February 28, 1989.

Overview of Issues

Two preliminary issue discussions follow. The first reflects issues identified and taken into account at different times in the Council/NOAA process prior to publication of the proposed rule. The

second describes the broad issues raised by public comments received following publication of the proposed rule. Two intrinsic approaches to the proposed rule—that of the decisionmaker and that of the user groups affected by the decisions—are thus displayed together. Individual public comments are addressed in the separate comments-and-response section.

1. Issues identified in various drafts and debated at the Council/NOAA workshops and Council Chairmen's meetings primarily derived from the need for flexibility. It became clear (a) that no rigid or universal overfishing definition could be applied to the great number of diverse species under management; and (b) that the ABC concept is not accepted by, or useful to, all Councils.

A few Councils expressed concern that identification of thresholds might serve to establish targets for harvest rather than provide for protection of resources. This concern was consistent with the need expressed by some other Councils to: (a) Identify measurable "conditions of concern" for each stock, with monitoring and review procedures; (b) permit conservative approaches, such as establishing an optimum yield (OY) "reserve," releasable to domestic or foreign fishermen as necessary, to solve operational problems and allow for uncertainties in stock estimates; and (c) retain an ability to take appropriate restrictive management actions at stock levels above the threshold.

2. Sixteen comments were received from outside NOAA: three Councils, two States (including two from different departments of the same State), two Federal agencies, one commercial fishing industry association, three recreational fishing associations, one professional association, and three individuals. The comments reflect varying approaches to, and awareness of, the changes in biological, economic, social, ecological, and political reality that have taken place since the Act took effect.

In broad terms, the issues raised by the commenters centered on the relationship of overfishing to OY, and, by inference, to other national standards (standard 3—management units, standard 4—allocations, and standard 6—variations and contingencies). It was clear that management of bycatch (incidental take, non-targeted species) was a troublesome issue in its effect on the resource (overfishing) and on the fishery (OY). Some commenters wanted more emphasis on economic measurement, on habitat, on sociological considerations, on non-consumptive uses, or on the administrative record to support management decisions. The ABC concept was questioned by some and demanded by others. Timing of the Stock Assessment and Fishery Evaluation (SAFE) effort also caused concern.

Commenters, in a few cases, may have been unfamiliar with (a) recent amendments to the Act, (b) the full set of guidelines (published in February 1983, codified at 50 CFR Part 602), or (c) supplementary guidance published in other than regulatory form (*Operational Guidelines—the Fishery Management Process*, last revised in February 1988). Republishing the national standard guidelines in their entirety here is intended to provide the public a fuller understanding of the interrelationships among the standards and of the broader basis on which FMPs are reviewed. The statutory language of each standard is presented as paragraph (a) under the appropriate section of the guidelines.

Overview of Approach

Certain principles instructed the revision throughout: flexibility, integrity, consistency. In addition, it should be reiterated that the effort was generated in response to the need, articulated by the 1986 Fishery Management Study and others, for a conservation standard. Consequently, the emphasis was on the resource, not its allocation. The revision focused on the definition of overfishing, not on OY. The guidelines, as revised, do not change the relationship between the two: the prevention of overfishing is an inherent limitation on OY; however, exceeding OY does not necessarily constitute overfishing. If a stock is in good condition, the specification of OY may serve various goals besides prevention of overfishing. Exceeding the OY may interfere with achievement of those goals but not affect the reproductive potential of the stock. On the other hand, if OY is the amount of fish that can safely be removed from the stock from a biological standpoint, exceeding OY may well constitute overfishing. The SAFE document(s) (which would ideally include all the types of data necessary for the determination of OY as prescribed by the Act) is intended to provide the basis for the Council's treatment of the overfishing/OY relationship. Councils have always been free to define overfishing as exceeding OY, but under the revised guidelines an overfishing definition and its justification are subject to review by the Secretary under the criteria described in § 602.11(c)(5).

The guidelines seek as much precision as possible in the use of the words "should" and "must". Section 602.2(c) states that "must" is used to denote an obligation to act and is used primarily when referring to requirements of the Act, the logical extension thereof, or other applicable law. "Should" is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Act, and is a factor that reviewers will look for in evaluating an FMP.

The guidelines seek to provide options rather than establish requirements. Lists are not exclusive; they provide examples or illustrations of the kind of information, discussion, or examination/analysis useful in demonstrating consistency with the standard in question.

The guidelines seek to avoid universal application of a specific provision, except as required by law, so that the maximum accommodation to regional or individual fishery characteristics can be achieved within the standards.

In summary, the guidelines are intended as an aid to decisionmaking, with responsible conservation and management of a valued national resource as the goal. NOAA's response to the comments was (a) to maintain policy decisions of the proposed rule since they had evolved, for the most part, from commments and recommendations discussed widely at various public meetings and workshops, (b) to reevaluate and try to balance divergent points of view, and (c) to clarify ambiguities. Many of the changes in the final guidelines are, in fact, refinements and clarifications, and as such, are not necessarily addressed individually in the body of the comments-and-response section.

Section 602.11(c) was reorganized in the final rule, though not changed substantively. The subparagraphs under paragraph 602.11(c)(2) and the last half of § 602.11(c)(7) were moved to a new § 602.11(c)(6) describing how an FMP must or may prescribe measures to prevent overfishing under different circumstances. The first half of § 602.11(c)(7) became § 602.11(c)(3); §§ 602.11(c)(3)–(c)(8) were renumbered as §§ 602.11(c)(4)–(c)(9).

The national standard guidelines published in 1983 at 50 CFR Part 602 included explanatory material as Appendix A to Subpart B. NOAA has chosen to republish that Appendix here with some modification of those sections relevant to this revision of §§ 602.11 and 602.12. The purpose of the Appendix is to preserve, as codified reference, useful explanatory material and supplementary policy rationale originally published as preamble to the

various editions of proposed and final 602 rules. Preambles are not codified in the Code of Federal Regulations (CFR). Parts of this preamble are therefore repeated in the Appendix so that the rationale for the changes will be available in the CFR for future reference.

Overview of Policy

Section 602.11 sets forth a comprehensive overfishing concept within which each Council must establish a specific, measurable definition of overfishing for each stock or stock complex covered by an FMP. That concept is based on the premise that irreversible damage to a resource's ability to recover in a reasonable period of time is unacceptable, and that fishing on a stock at a level that severely compromises that stock's future productivity is counter to the goals of the Act. As used in this revision, ABC is not meant as a quota for the fishery, but rather, may be used as a step in deriving OY from maximum sustainable yield (MSY). (See § 602.11(e).) In this context, the ABC is set by a Council, not NOAA. Since the ABC concept is not necessarily applicable to all fisheries, Councils may establish an ABC level, but are not required to do so.

Councils are provided with the flexibility needed to develop a definition of overfishing appropriate to the individual stock or species characteristics, as long as it is defined in a way that allows the Councils and the Secretary to evaluate the condition of the stock relative to the definition.

A phase-in schedule for implementation is included. General criteria are set forth as a basis for Secretarial review of the definition; these criteria address the overfishing definition specifically and do not change the Secretary's obligation to review FMPs/amendments for consistency with all the national standards, the Act, and other applicable law.

NOAA believes that, although it is difficult to define precisely the level at which overfishing jeopardizes recovery of a stock, there are indicators of existing or impending overfishing that should be heeded. Councils are encouraged to identify such conditions. If these conditions are realized in a particular fishery, the best scientific advice may conclude that immediate remedial action should be taken. (See Appendix A to Subpart B of the guidelines for a fuller discussion.)

As management regimes become more comprehensive, the interrelationships of fishing pressures on target and non-target (major and minor) species need to be addressed more directly. NOAA believes that in determining allowable fishing levels Councils should consider all sources of mortality on a stock, including non-targeted fishing, discards, and illegal catch. Because all removals from the stock, whether landed or unlanded, will affect spawning stock biomass levels now or in the near future, the Councils should attempt to obtain estimates of all sources of mortality and consider the estimates in adjusting directed fishing levels. Total fishing mortality on a stock should be managed such that overfishing does not occur. (See §§ 602.11(c)(6) and (c)(7)(i).) Allowance has been made for the establishment and release of OY reserves to accommodate uncertainties in estimates of stock size or to solve operational problems.

In selected situations, a Council may determine that overfishing of a minor component species of a multi-species fishery is warranted, based on net benefits expected not only for the fishery but for the Nation. Although fishing any stock to the extent that it requires protection under the Endangered Species Act (ESA) must never be allowed to occur, some very limited overfishing may be acceptable if it is identified, and sufficiently analyzed and justified. However, in all cases, alternatives should be considered that would prevent such overfishing. (See comment #19 and Appendix A to Subpart B for a fuller discussion of protection of non-targeted stock in a mixed species fishery.)

Section 602.12(e) describes a SAFE document or set of documents prepared or aggregated periodically, whereby Councils can obtain an objective overview of the best available information on the status of stocks and fisheries under management. Several Councils currently produce such fishery reviews, which generally provide the kinds of information suggested in the SAFE report. The SAFE report does not necessarily call for new information or new procedures; the intent is to provide, in one reference, an aggregation or a summary of the best biological, social, economic, and ecological information available to a Council when needed: (a) To determine annual harvest levels or OYs for species in each fishery management unit (FMU), and (b) to evaluate the effectiveness of its management in preventing overfishing as defined by the Council. Such a report can provide a useful tracking tool for assessing the relative achievement of FMP objectives by establishing a time-series data base indicating the relative health of stocks and the industry dependent on them.

While the Secretary has the responsibility for assuring that the SAFE report is produced, it is not intended to be exclusively authored by NOAA. The report can be produced by any combination of talent from academic, government, or other sources. The report should be reviewed annually, but is not required to be revised annually except as there have been new developments or significant changes in a fishery (see §§ 602.12 (b) and (d), and § 602.13(d)(2)). Appendix A to Subpart B gives examples of the types of information/data that are useful to the Council for its decisions. No one piece of information is mandatory, but the report should contain the best available information appropriate to the fishery, taking into consideration the need to establish priorities within budget constraints.

Comments and Response.

Section 602.11 Standard 1

1. *Comment:* One commenter felt that national standard 1 should not seek to obtain optimum yield for the "United States fishing industry" (§ 602.11(a)), but rather, seek to provide the greatest overall benefit to the Nation.

Response: No change was made. The language of national standard 1 is statutory (section 301(a)(1) of the Act). The Act was amended by Pub. L. 98–623 to highlight contemporaneous policy that the greatest benefit to the Nation would accrue from U.S., rather than foreign, fisheries.

2. *Comment:* Several commenters expressed concern about the general effect of a stated conservation standard on OY. One felt that protection against overfishing might be so constrained that appropriate harvest, under MSY and OY, would not be permitted. Another worried that defining overfishing only in terms of MSY was too narrow and did not include the concept of jeopardizing the ability of a stock to continue to yield food production and recreational opportunities (values identified in the Act as a part of the definition of OY). A third wanted to add language to the criteria for Secretarial approval of a Council definition to assure an optimum harvest to fulfill the [OY] "standard of food production."

Response: No change was made. These comments emphasize protection of the harvest rather than the resource, addressing allocation questions rather than overfishing. In providing a general definition of overfishing, NOAA did not change the statutory relationship of overfishing to OY. (NOAA's concept of the relationship of overfishing to OY is more fully described in the section of the

preamble headed "Overview of approach," in the Appendix to Subpart B, and in § 602.11(g) of the guidelines.)

Under the revised guidelines, Councils will be developing a definition for overfishing specific to the stocks or stock complexes in each of the FMPs. The development of such a definition is a public process, and once proposed, the definition and its basis are subject to review and approval by the Secretary under the criteria described in § 602.11(c)(5). These criteria address resource rather than allocation issues. (See "Overview of policy" section.)

3. *Comment:* One commenter suggested that overfishing be defined as any level of fishing that jeopardizes a stock's ability to remain at levels that yield OY; another proposed that ability to sustain OY be the measure of overfishing.

Response: No change was made. Councils are free to define overfishing for each stock or stock complex under management as is justified by the best available scientific information. (See response to comments #2 and #4.)

4. *Comment:* Another facet of the relationship of overfishing to OY was illustrated by a comment urging that overfishing be defined as the level or rate of fishing mortality that reduces the target stock, or a population dependent upon it, below the OY level or to a level from which either is unable to recover to its pre-exploitation size in a specified time.

Response: No change was made. The guidelines do not preclude the Councils from defining overfishing as exceeding OY or from specifying a timeframe for rebuilding of a stock; the guidelines are not intended to direct how a Council defines overfishing. NOAA believes that no universal definition or approach can be applied to every fishery. The guidelines do provide that individual FMP overfishing definitions for fishery management units, developed by the Council and approved by the Secretary, must be in place within 18 months from the effective date of the guidelines and thereafter. (See response to comments #2 and #3.)

NOAA believes that the commenter's suggestion to extend the overfishing definition to include a population dependent upon the target stock goes beyond the intent of the Act. Consideration of predator-prey relationships is already a necessary part of the determination of OY (see § 602.11(f)(3)). In addition, provisions of the ESA and Marine Mammal Protection Act (MMPA) are among the other applicable law that must be considered by the Councils in developing FMPs. While the provisions of the MMPA place no specific obligations on the Councils, a Council is expected to provide adequate information in FMPs and related National Environmental Policy Act (NEPA) documents to inform the Secretary of any potential problems in the interaction of the fishery under management with marine mammal populations (see *Operational Guidelines*, Feb. 1988 revision). The Secretary has the responsibility to ensure that the provisions of the MMPA are carried out.

5. *Comment:* One commenter objected to the use of the term MSY in the general definition of overfishing in § 602.11(c)(1), preferring the terms "maximum biological yield" and "maximum economic value" as used in the original text of the 1983 guidelines.

Response: No change was made. NOAA was persuaded during the Council/NOAA workshops that the term "MSY" more accurately reflects the emphasis of the current revision on the relative abundance of living resource populations in response to fishing. NOAA recognizes past controversy concerning MSY as a management goal. However, it is used in the Act as the baseline tool in the determination of OY and, as such, is the underlying biological rationale upon which most determinations of OY rest.

6. *Comment:* One commenter suggested that the phrase "long-term" should be deleted from the first sentence of § 602.11(c)(1). The commenter argued that the term is undefined and that, given the presence of the qualifying phrase "on a continuing basis," it is redundant as well.

Response: No change was made. A catch equal to MSY may often be harvested for a short time, even from a severely depleted stock. Thus, this paragraph's use of the phrase "on a continuing basis" is significant. It is important to note that the phrase "long-term" is not used to qualify the production of MSY on a continuing basis (which would be redundant), but rather to qualify a stock's capacity to produce MSY on a continuing basis. NOAA believes that it is possible for a stock to lack the short-term capacity to produce MSY on a continuing basis without being overfished in the sense of the Act. For example, a temporarily depleted stock could become decimated if managers attempted to institute an immediate and sustained program of harvesting at the MSY level. The same stock, however, might retain the long-term capacity to sustain such a harvest program, *i.e.*, given an appropriate fishing mortality rate, the stock could rebuild to a level at which it could produce MSY on a continuing basis. As distinguished from temporary depletion, then, overfishing refers to those cases in which a stock's long-term capacity to produce MSY on a continuing basis is jeopardized.

7. *Comment:* Instead of allowing specific overfishing definitions to be developed in terms of a threshold biomass, maximum fishing mortality level, or other measurable standard, one commenter suggested that the guidelines should require specification of a threshold biomass for each fishery. The commenter argued that, without a threshold biomass, stocks will inevitably be overfished.

Response: No change was made. The language of proposed § 602.11(c)(4), now § 602.11(c)(5), makes clear that any specific overfishing definition developed under this section must be sufficient to prevent the stock from being overfished. Given this, NOAA does not believe it necessary to mandate a particular form for all specific overfishing definitions. In particular, for stocks whose biomass cannot be estimated reliably, it is difficult either to define a threshold biomass or to determine when such a threshold has been violated. In addition, § 602.11(c)(6) describes how an FMP must or may prescribe measures to prevent overfishing under the circumstances relevant to the form of the definition and the objectives of the FMP.

8. *Comment:* One commenter noted that it is sometimes difficult to define a threshold biomass, especially in the case of transboundary stocks or stocks exploited in a multispecies fishery.

Response: No change was made. The commenter is correct, and has pinpointed the reason that the guidelines allow for other forms of specific overfishing definitions. The general problems associated with management of transboundary stocks are also addressed in the guidelines for national standard 3 (§ 602.13).

9. *Comment:* One commenter suggested that the requirement for specifying an acceptable rebuilding time for overfished stocks is unrealistic when recruitment is uncertain.

Response: No change was made. NOAA recognizes that uncertainty involving any parameter will tend to make estimates of rebuilding time correspondingly uncertain. However, this fact does not remove the requirement to proceed with rebuilding at a reasonable rate. If a stock becomes overfished, national standard 1 implies that some sort of rebuilding program will be necessary. If left unconstrained, the rate of rebuilding theoretically could range between zero and the rate

corresponding to complete cessation of fishing. However, a rate near zero would obviously be incompatible with the intent of the Act. A Council and the Secretary should be able to agree on some higher rebuilding rate that is consistent with national standard 1 as well as with the objectives of the FMP in question.

10. *Comment:* One commenter objected to the use of "should" in proposed § 602.11(c)(2), with reference to Council actions when a stock or stock complex is approaching an overfished condition. The commenter felt it not in the spirit of standard 1 to leave addressing this issue to Council discretion.

Response: NOAA agrees in principle, and has moved this paragraph to a new section addressing actions of the Council to prevent overfishing (§ 602.11(c)(6)). No change was made in the wording, however, because circumstances surrounding such an event are time-dependent and may call for a range of management measures difficult to include prospectively in an FMP beyond the intention to reduce fishing mortality. One of the purposes of the SAFE document(s) is to provide a tracking tool for the status of the stocks. In addition, under certain conditions, the use of framework management measures, which provide the public with advance notice of potential responses to specific conditions, assist in quick action when necessary. (See guidelines for national standard 6, § 602.16, and Phase V of the *Operational Guidelines*, 1983.)

11. *Comment:* One commenter suggested deleting the word "targeted" from proposed § 602.11(c)(2), suggesting that, as written, the paragraph would allow a Council to avoid managing bycatch and discard levels that could be significant contributors to overfishing.

Response: NOAA did not intend to allow this, and has deleted "targeted", as requested. (See "Overview of policy" section, Appendix A to Subpart B, and responses to comments #14 and #19 for a further discussion of bycatch and sources of fishing mortality.)

12. *Comment:* One commenter suggested that the guidance to the Council be changed to provide detailed population dynamics descriptions of the factors involved in the various rates, such as natural mortality, etc.

Response: No change was made. This guidance would not be required, as such material would be available in the SAFE documentation.

13. *Comment:* One commenter recommended including a mandate to take action to control habitat degradation.

Response: Habitat needs are recognized as critical to recruitment, but they are more appropriately addressed in other areas of the Council's responsibility and are not directly related to the definition of overfishing. However, proposed § 602.11(c)(5), which is now found at § 602.11(c)(7), addresses alterations in environment/habitat conditions. It was modified to reference the new discretionary responsibilities of the Councils under section 302(i) of the Act concerning the effect of activities undertaken by any State or Federal agency that may affect fisheries under Council authority.

14. *Comment:* It was suggested that the words "targeted effort" in proposed § 602.11(c)(2)(iii) be changed to "harvest."

Response: The word "targeted" has been deleted because measures to address overfishing need to consider all sources of fishing mortality. The word "effort" was retained as it more directly relates to fishing mortality. Harvest usually refers only to fish landed and does not include discard mortality. (See "Overview of policy" section.)

15. *Comment:* A commenter suggested that "should" be changed to "must" in the second sentence of proposed § 602.11(c)(3) so that it would read, "Councils must build into the definition appropriate consideration of risk."

Response: NOAA accepts this suggestion as being consistent with the requirements of national standard 6, and with the intent of this revision to emphasize conservation.

16. *Comment:* One commenter requested that language be added to proposed § 602.11(c)(3) to require that the record be clear (a) on the factors considered in arriving at a Council's judgment in cases where scientific data are severely limited, and (b) on any efforts made to include time specific milestones to identify and gather the needed data on which informed decisions could be made.

Response: NOAA agrees that Council decisions should be publicly documented. However, no change in language was made here. The guidelines for national standard 7 (§ 602.17) and the requirements of NEPA and E.O. 12291 provide the relevant direction on the questions of analysis and public record. (See the response to comment #37 on the general question of timeliness of data.)

17. *Comment:* The same commenter wished to add similar language to proposed § 602.11(c)(4) to ensure that the decision elements of Secretarial approval or disapproval be made a part of the record of the FMP.

Response: No change was made. The Secretary's consideration of the elements in § 602.11(c)(4), which is now found at § 602.11(c)(5), will be part of the administrative record for the FMP or amendment.

18. *Comment:* One commenter was concerned that the criteria for Secretarial approval include consideration of Indian Treaty rights as stated in the Act.

Response: This comment brought to NOAA's attention the ambiguity of this section as proposed. The first sentence has been redrafted to read, "Secretarial approval or disapproval *of the definition of overfishing* will be based on * * *". Consideration of Indian Treaty rights as a factor in developing FMPs is unaffected by these revisions to § 602.11; supplementary guidance is available in the *Operations Guidelines*, Feb. 1988 revision. (See "Overview of policy" section.)

19. *Comment:* Four commenters noted an apparent inconsistency between the mandate to prevent overfishing and the exception in proposed § 602.11(c)(6) that would allow overfishing of certain stocks. One suggested that this is "bycatch" overfishing and should be identified as such. Another contended that the risk of overfishing the bycatch species should determine the allowable fishing effort on the primary species. The fourth commenter suggested that any bycatch that reduces food supplies and thereby indirectly causes marine mammals, birds, or other species to be reduced below their optimum sustainable level also should constitute overfishing under the Act.

Response: No change was made. This paragraph does not allow overfishing of any species for commercial reasons in violation of national standard 1, and does not indicate lack of concern for individual populations within a fishery management unit (FMU). Rather, the intent of this paragraph is to allow mixed species fishing under certain conditions. First, the deliberate overfishing of a "minor stock component" must be identified. Second, the excepted type of overfishing must be demonstrated by analysis to result in net benefits not only to the fishery but to the Nation. This analysis should indicate who would benefit, who would suffer losses and to what extent (in quantitative terms, if possible), and why such overfishing is warranted. Finally, it must be demonstrated that the excepted overfishing would not cause any stock component, regardless of FMU, to require protection under the ESA. (See "Overview of policy" section and Appendix A to Subpart B.)

NOAA does not agree that the excepted type of overfishing should be labeled bycatch overfishing because it confuses different forms of bycatch mortality. For example, the term bycatch may apply to species caught out of season, catches of an undesired sex of a species or at a time when product recovery rates are low, or prohibited species catches.

Causing the depletion of any species of marine mammals is not authorized by this section. (See response to comment #4 for discussion of predator/prey relationships, of the general relationship between the MMPA and the Magnuson Act and of the Councils' need to be cognizant of the interaction of fishery management with marine mammal populations.)

20. *Comment:* One commenter complained that proposed § 602.11(c)(7) apparently proscribed designation of "growth" or "pulse" overfishing as overfishing under national standard 1. Another wished to delete reference to "pulse" fishing entirely, and two commenters suggested that "growth", "localized", or "pulse" overfishing should be recognized as overfishing under national standard 1 if they tend to preclude achievement of OY.

Response: No change was made. This paragraph (now designated as § 602.11(c)(3)) states simply that these fishing patterns do not necessarily constitute overfishing under national standard 1, which the guidelines define generally as a rate of fishing that jeopardizes the long-term capacity of a stock or stock complex to produce MSY on a continuing basis. To the extent that it satisfies this general definition in particular cases, either "growth" or "pulse" overfishing may constitute overfishing under national standard 1. For example, "growth" overfishing could qualify as overfishing under national standard 1 if it resulted in the removal of too many fish before they are old enough to spawn. In the case of either "growth" or "pulse" overfishing, the key point is not so much the pattern of fishing (e.g., pulse vs. sustained) as the rate of fishing mortality and its effect on the long-term capacity of the stock to produce MSY. A Council may recommend conservation and management measures to prevent or permit these effects, depending on the objectives of a particular FMP and the specific definition of overfishing established for the stock or stock complex under management. (See § 602.11(c)(6)(v) and Appendix A to Subpart B.)

Although the guidelines acknowledge that the specified fishing patterns may constitute overfishing under national standard 1 in particular cases, it should be noted that this would occur only when such patterns jeopardized the long-term capacity of a stock or stock complex to produce MSY on a continuing basis, not simply because they tended to preclude achievement of OY. Although it is theoretically possible for the prevention of overfishing to coincide with the achievement of OY, national standard 1 distinguishes between the two. That distinction is maintained in the guidelines.

21. *Comment:* In the proposed rule, NOAA specifically solicited comment on the implementation provisions. One commenter wanted to ensure a time certain for submissions of amendments to existing FMPs; another wanted to make sure that all FMPs were included in the requirement for an overfishing definition, existing and future. In addition, at the Council Chairmen's meeting on January 27–28, 1989, the Chairmen made some recommendations regarding the phase-in schedule: (a) That the 18-month implementation date be retained; (b) that any FMP or amendment in progress at the time of the effective date of the revised rule must include a definition of overfishing; (c) that within 3 months of the effective date, each Council advise the Secretary of its intent to comply, and if, in its opinion, any FMP is currently consistent with the provisions of § 602.11(c) without amendment; (d) that within 12 months of the effective date, the Secretary review such FMP and notify the Council of concurrence or disagreement; and (e) that within 15 months of the effective date, each Council submit an amendment to any FMP not currently consistent with the provisions of § 602.11(c) to bring it into compliance.

Response: Section 602.11(c)(8) is revised to accommodate all the commenters' recommendations, except that the time for Secretarial review and notification to a Council regarding concurrence or disagreement with its opinion as to consistency is reduced from 12 months from the effective date to 3 months from receipt of a Council's letter of advice. This allows Councils more time to develop amendments as necessary before the 18-month implementation date.

22. *Comment:* Two commenters suggested that paragraph 602.11(e) should include an explicit statement of the relationship between ABC and overfishing.

Response: No change was made. The paragraph states that ABC must be "acceptable"; therefore, ABC can never imply a harvest level that would constitute overfishing. In particular, when overfishing is defined in terms of a threshold, the paragraph makes clear that ABC must equal zero whenever the threshold is violated.

23. *Comment:* Two commenters suggested that specification of ABC should be mandatory for each stock covered by an FMP.

Response: No change was made. Since ABC is not mentioned in the Act, its specification is viewed only as one possible step in the process of preventing overfishing while achieving OY. NOAA's aim in drafting this section was to reflect how ABC is defined and used by those Councils that currently employ the concept.

24. *Comment:* Two commenters suggested that paragraph 602.11(e) incorporate language requiring the use of conservative estimates, by choosing either the scientific parameter estimates that yield the lowest reasonable value of ABC, or the lowest reasonable estimates of the parameters listed in the second sentence of § 602.11(e)(2).

Response: No change was made. Since the Councils that currently employ the ABC concept do not require the use of conservative estimates, such language is not included in this section (see response to comment #23). Since ABC is used as a step in determining OY and consequent management measures, its specification is susceptible to the requirements of national standard 6 to consider uncertainty in parameter estimates.

25. *Comment:* One commenter wanted to change the definition of OY to include benefits other than food production and recreational opportunities.

Response: No change was made. The definition of OY at § 602.11(f)(1) is the statutory definition and includes other modifiers—economic, social, or ecological factors. (Also see § 602.11(f)(3).)

26. *Comment:* A Council suggested deletion of the phrase "at reasonable prices" from the goal of providing seafood to consumers in § 602.11(f)(2)(i). The commenter considered the goal unrealistic since forces such as international markets, which are beyond a Council's purview, control consumer prices.

Response: NOAA agrees, and has deleted the phrase.

27. *Comment:* In § 602.11(f)(3), a commenter suggested removing the example of a factor that might not be relevant in every fishery.

Response: NOAA has deleted the phrase "for instance, there may be no Indian treaty rights".

28. *Comment:* A commenter wanted to emphasize the value of both commercial

and recreational fisheries as economic factors in § 602.11(f)(3)(i).

Response: NOAA accommodated this comment by deleting the adjective "industrial" so that the value of all types of fisheries is listed.

29. *Comment:* Several commenters had suggestions for additional social factors to be listed in § 602.11(f)(3)(ii).

Response: No change was made. This paragraph contains examples; the list is not meant to be exclusive.

30. *Comment:* A commenter requested an addition to § 602.11(f)(4) to address the possibility of a closure before the end of a fishing season. The comment proposed inclusion of an OY reserve and suballocations of quotas as part of the OY specification. Such measures would preclude fishermen in one geographic location from harvesting the entire quota and denying fishing opportunities to fishermen in a different geographic location. Two commenters sought inclusion of the allocative reserve concept in § 602.11(g)(3) to serve the same purpose.

Response: No change was made. NOAA agrees that OY reserves and geographic suballocations are useful management measures. The problems they address fall under the allocation concerns of national standard 4 and are covered by the guidelines at § 602.14.

31. *Comment:* The word "multiyear" in § 602.11(f)(4)(iv) was considered superfluous by one commenter, who noted that all FMPs are now multiyear.

Response: NOAA agrees, and has deleted the word "multiyear."

32. *Comment:* Two commenters objected to the allusion to a "fabricated MSY" in § 602.11(f)(4)(v).

Response: NOAA deleted the phrase as misleading. The Act does require that OY be derived from MSY; however, NOAA recognizes that there are cases where the specification of MSY may be either impossible or irrelevant. This may be due to lack of assessment data (as in minor components of a mixed-species fishery), or because biological resiliency or high fecundity of some stocks or other fishery characteristic may allow OY to become a descriptive statement only, making a numerical calculation of MSY unnecessary. Nevertheless, NOAA wants to emphasize that OY must still be derived from biological information, as for example, the proportional abundance of associated species.

33. *Comment:* One commenter asked whether the analysis required by § 602.11(f)(5) is part of the FMP at the time it is first submitted for public review.

Response: The answer is yes.

34. *Comment:* A commenter questioned who would judge the requirement in § 602.11(g)(1) that management measures be enforceable; the Council does not want "existing and arguably outmoded enforcement capabilities" to control the Council's choice of management measures.

Response: The Department of Commerce and the Coast Guard are charged with enforcement of fishery regulations. Their judgments about the practicality and effectiveness of proposed management measures in terms of enforceability should be given serious consideration by the Councils. Guidance may be found in Part V of the *MFCMA Handbook.*

Section 602.12 Standard 2

35. *Comment:* A commenter noted that annual SAFE reports for some fisheries may not be necessary as the rate of change in the resource may be slow.

Response: No change was made. Accumulation of new information on any resource may be slow and not indicate a need for an annual SAFE report. This is why NOAA proposed at § 602.12(e)(1)(i) that the SAFE report be reviewed at least annually to determine if updating or changing it in any way is warranted.

36. *Comment:* One commenter complained that the guidelines were unclear on who determines the membership of the "SAFE panel," while another saw no need to require Council and NMFS representatives on any team charged with drafting a SAFE report.

Response: The periodic production of SAFE reports as proposed contemplated no SAFE panel or committee *per se.* Councils and their associated NMFS Regional Offices may determine how best to acquire and analyze data and write the report. Any combination of talent from Council, State, university, Federal or other sources may be used for this purpose. NOAA agrees, therefore, that since there is no need to require representatives of any specific group on a SAFE report drafting team, the parenthetical phrase "(but at a minimum must include Council and NMFS representatives)" is unnecessary and has deleted it.

37. *Comment:* Some commenters suggested that SAFE reports should be prepared at least 6 months prior to the beginning of a fishing year to allow time for the rulemaking process to use the report as a technical basis for regulations that must be in place at the beginning of the fishing year.

Response: No change was made. Timeliness is part of the information objective of the SAFE report. Ideally, the most recent edition of a SAFE report, with the most current data, should be available to a Council in time for their determination of harvest levels or OYs for any fishing year. However, publication of a SAFE report 6 months in advance of this time may obviate use of the best available information. For example, if 5 or 6 months are necessary to do fish stock and industry surveys and analyses of the resulting data, requiring the summary of these data 6 months prior to a Council's determination of harvest levels will assure that this determination will be based on data that are about a year old when they are used and prevent the use of any more recent analyses, if available. This would place the Council in a position of managing next year's fishery with last year's data when some data from the current year also may be available. For this reason, the guidelines do not impose specific timeliness criteria on the production of SAFE reports. Deadlines for the completion of these reports are better set by the Councils in consultation with NMFS and other scientists who are most familiar with the production and analysis of fishery data for making management decisions.

38. *Comment:* Several commenters expressed concern with the contents of the SAFE report. Some comments expressed a need for more specific attention for marine recreational fisheries and non-consumptive users of fishery resources in the suggested list of types of information for inclusion in SAFE reports. For example, some reviewers thought that the term "recreational fishing industries" excluded such non-consumptive activities as photography, diving, research, having a recreational fishing experience, and other aesthetic uses. Other comments focused on a need to include more economic descriptors such as demand curves for recreational fishing and each commercial fishing product, estimates of producer and consumer surplus for recreational and commercial fisheries, and economic or catch rate threshold levels at which fishermen will choose to enter or leave a fishery. Some comments suggested inclusion of more biological information. One comment criticized the suggested SAFE report contents as failing to link the report to the specification of overfishing required under § 602.11(c). The commenter wrote that the report should focus on a determination of fishing mortality rate and stock conditions relative to the specific criteria for overfishing. Another commenter stated that the report must include assessments of how fisheries affect and are affected by marine

mammals, birds, and other non-target species.

Response: The kinds of data or information that NOAA contemplated in proposing the SAFE report are those that are necessary for understanding the biological condition of the harvested fish stock and the socioeconomic condition of the persons or businesses that rely on such harvests. NOAA listed some types of data that may be useful for this purpose by way of example. Recognizing that such a listing within the body of the guideline text might be perceived as mandatory or exclusive, NOAA moved the language describing examples of SAFE information to the Appendix. Thus, it should be clear that the lists (a) are not mandatory; (b) are not intended to be exclusive of other kinds of data that may have particular pertinence in certain areas; additional types of information—such as those recommended for inclusion in SAFE reports by the commenters—may be included if needed and available.

NOAA agrees that emphasis appears to be placed on commercial and extractive uses of marine fisheries. Therefore, in § 602.12(e)(1), the phrase "the recreational and commercial fishing industries" has been changed to read "recreational and commercial interests," and the appropriate Appendix language describing examples of SAFE information was modified accordingly. NOAA also agrees that to insert "commercially" before "harvested" (in what is now found in Appendix A to Subpart B under paragraph (2)(b) of the SAFE Report section) clarifies an ambiguity.

Essentially, any kind of information needed by a Council and the Secretary for periodic understanding of the state of the fishery would be appropriate for inclusion in a SAFE report. NOAA cautions, however, that while SAFE reports should present comprehensive and synoptic information on a fishery, they need not be encyclopedic. SAFE reports should present objective, scientifically based information relevant to the fishery.

To satisfy the purposes of the SAFE report, NOAA intends to allow maximum flexibility to Councils, in cooperation with the appropriate NMFS Regions and Centers, to develop the contents and organization of SAFE reports in the most reasonable or logical way for the fisheries being described. This may or may not include a discussion on how close a fishery is to a condition of being overfished.

39. *Comment:* One commenter was concerned about the identification of data deficiencies and suggested that SAFE reports recommend ways to resolve such deficiencies and a priority for securing identified data needs.

Response: No change was made. A discussion of data needs may be included if deemed necessary for making management decisions. Such discussions may be more relevant in a separate document, however, as the SAFE report is intended to display a synopsis of known or existing information over time.

Classification

The Under Secretary of Commerce for Oceans and Atmosphere has determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The guidelines indicate how NOAA interprets the fishery management principles in the national standards of the Magnuson Act. They describe a range of acceptable management measures that could be adopted by the Councils, approved by the Secretary, and subsequently translated into regulations. The impact upon the public occurs through specific management measures contained within specific FMPs; until a specific FMP is developed, there is no basis for evaluating the consequences of these guidelines.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis (RFA) was not prepared. Any economic impacts on small entities will be addressed through RFAs for individual FMPs.

These amendments to the national standard guidelines do not themselves affect the human environment. Thus, NOAA has determined that no environmental impact statement (EIS) or environmental assessment (EA) is required. FMPs and FMP amendments developed as a result of these guidelines will require EISs or EAs.

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

Because the guidelines will have no direct regulatory impact upon the public, NOAA has determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 602

Fisheries, Fishing.

Dated: July 12, 1989.

James W. Brennan,

Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR Part 602 is revised as follows:

PART 602—GUIDELINES FOR FISHERY MANAGEMENT PLANS

Subpart A—General

Sec.

602.1 Purpose and scope.
602.2 Style guide.

Subpart B—National Standards

602.10 General.
602.11 National Standard 1—Optimum Yield.
602.12 National Standard 2—Scientific information.
602.13 National Standard 3—Management Units.
602.14 National Standard 4—Allocations.
602.15 National Standard 5—Efficiency.
602.16 National Standard 6—Variations and Contingencies.
602.17 National Standard 7—Costs and Benefits.
Appendix A to Subpart B—Explanatory Material.

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

Subpart A—General

§ 602.1 Purpose and scope.

The Act requires that any fishery management plan or amendment prepared by either the Regional Fishery Management Councils or the Secretary of Commerce, and any regulations issued to implement a fishery management plan or amendment, shall be consistent with seven national standards, the other provisions of the Act, and any other applicable law. Part 602 implements those portions of the Act that pertain to the development, content, submission, amendment, review, and implementation of fishery management plans, and establishes guidelines to assist in achieving the required consistency.

§ 602.2 Style guide.

(a) *Definitions.* The terms used in these guidelines have the meanings that are prescribed in section 3 of the Act. In addition, the following definitions apply:

The Act—the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*), also known as the FCMA, or the Magnuson Act.

Council—Regional Fishery Management Council, as established by the Act.

Secretary—Secretary of Commerce.

(b) *Abbreviations.*

ABC—acceptable biological catch.

DAH—estimated domestic annual harvest.
DAP—estimated domestic annual processing.
EY—equilibrium yield.
EEZ—exclusive economic zone.
FMP—fishery management plan.
JVP—joint venture processing.
MSY—maximum sustainable yield.
OY—optimum yield.
PMP—preliminary fishery management plan.
TAC—total allowable catch.
TALFF—total allowable level of foreign fishing.

(c) *Word usage.* (1) *Must* is used to denote an obligation to act; it is used primarily when referring to requirements of the Act, the logical extension thereof, or of other applicable law.

(2) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Act, and is a factor reviewers will look for in evaluating an FMP.

(3) *May* is used in a permissive sense.

(4) *May not* is proscriptive; it has the same force as *must not.*

(5) *Will* is used descriptively.

(6) *Shall* is not used at all, except when quoting the statutory language of each standard. "Must" is used instead of "shall" to avoid confusion with the future tense.

(7) *Could* is used when giving examples, in a hypothetical, permissive sense.

(8) *Can* is used to mean "is able to," as distinguished from "may."

(9) *Examples* are given by way of illustration and further explanation. They are not inclusive lists; they do not limit options.

(10) *Analysis,* as a paragraph heading, signals more detailed guidance as to the type of discussion and examination an FMP should contain to demonstrate compliance with the standard in question.

(11) *Determine* is used when referring to OY.

(12) *Adjust* is used when establishing a deviation from MSY for biological reasons, such as in establishing ABC, TAC, or EY.

(13) *Modify* is used when the deviation from MSY is for the purpose of determining OY, in accord with relevant economic, social, or ecological factors.

(14) *Industry* includes recreational and commercial fishing and the harvesting, processing, and marketing sectors.

Subpart B—National Standards

§ 602.10 General.

(a) *Purpose.* (1) This subpart establishes guidelines, based on the national standards, to assist in the development and review of FMPs, amendments, and regulations prepared by the Councils and the Secretary.

(2) In developing FMPs, the Councils have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives. The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Act, and other applicable law. The Secretary has an obligation under section 301(b) of the Act to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) The national standards are statutory principles that must be followed in any FMP. The guidelines summarize Secretarial interpretations that have been and will be, applied under these principles. The guidelines are intended as aids to decisionmaking; FMPs formulated according to the guidelines will have a better chance for expeditious Secretarial review, approval, and implementation. FMPs that are in substantial compliance with the guidelines, the Act, and other applicable law must be approved.

(b) *Fishery management objectives.* (1) Each FMP, whether prepared by a Council or by the Secretary, should identify what the FMP is designed to accomplish, i.e., the management objectives to be attained in regulating the fishery under consideration. In establishing objectives, Councils balance biological constraints with human needs, reconcile present and future costs and benefits, and integrate the diversity of public and private interests. If objectives are in conflict, priorities should be established among them.

(2) How objectives are defined is important to the management process. Objectives should address the problems of a particular fishery. The objectives should be clearly stated, practicably attainable, framed in terms of definable events and measurable benefits, and based upon a comprehensive rather than a fragmentary approach to the problems addressed. An FMP should make a clear distinction between objectives and the management measures chosen to achieve them. The objectives of each FMP provide the context within which the Secretary will judge the consistency of an FMP's conservation and management measures with the national standards.

§ 602.11 National Standard 1—Optimum Yield.

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

(b) *General.* The determination of OY is a decisional mechanism for resolving the Act's multiple purposes and policies, for implementing an FMP's objectives, and for balancing the various interests that comprise the national welfare. OY is based on MSY, or on MSY as it may be adjusted under paragraph (d)(3) of this section. The most important limitation on the specification of OY is that the choice of OY—and the conservation and management measures proposed to achieve it—must prevent overfishing.

(c) *Overfishing.* (1) Overfishing is a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce MSY on a continuing basis. Each FMP must specify, to the maximum extent possible, an objective and measurable definition of overfishing for each stock or stock complex covered by that FMP, and provide an analysis of how the definition was determined and how it relates to reproductive potential.

(2) The definition of overfishing for a stock or stock complex may be developed or expressed in terms of a minimum level of spawning biomass ("threshold"); maximum level or rate of fishing mortality; or formula, model, or other measurable standard designed to ensure the maintenance of the stock's productive capacity. Overfishing must be defined in a way to enable the Council and the Secretary to monitor and evaluate the condition of the stock or stock complex relative to the definition.

(3) Different fishing patterns can produce a variety of effects on local and areawide abundance, availability, size, and age composition of a stock. Some of these fishing patterns have been called "growth," "localized," or "pulse" overfishing; however, these patterns are not necessarily overfishing under the national standard 1 definition, which focuses on recruitment and long-term reproductive capacity. (Also see paragraph (c)(6)(v) of this section and Appendix A to Subpart B of this part.)

(4) Overfishing definitions must be based on the best scientific information available. Councils must build into the definition appropriate consideration of risk, taking into account uncertainties in estimating domestic harvest, stock conditions, or the effects of

environmental factors (see § 602.16 of this part). In cases where scientific data are severely limited, the Councils' informed judgment must be used, and effort should be directed to identifying and gathering the needed data (see §§ 602.12 and 605.14 of this part).

(5) Secretarial approval or disapproval of the overfishing definition will be based on consideration of whether the proposal:

(i) Has sufficient scientific merit;

(ii) Is likely to result in effective Council action to prevent the stock from closely approaching or reaching an overfished status;

(iii) Provides a basis for objective measurement of the status of the stock against the definition; and

(iv) Is operationally feasible.

(6) In addition to a specific definition of overfishing for each stock or stock complex, an FMP must contain management measures necessary to prevent overfishing.

(i) If overfishing is defined in terms of a threshold biomass level, the Council must ensure that fishing effort does not cause spawning biomass to fall and remain below that threshold.

(ii) If overfishing is defined in terms of a maximum fishing mortality rate, the Council must ensure that fishing effort on that stock does not cause the maximum rate to be exceeded.

(iii) If data indicate that an overfished condition exists, a program must be established for rebuilding the stock over a period of time specified by the Council and acceptable to the Secretary.

(iv) If data indicate that a stock or stock complex is approaching an overfished condition, the Council should identify actions or combination of actions to be undertaken in response.

(v) Depending on the objectives of a particular FMP and the specific definition of overfishing established for the stock or stock complex under management, a Council may recommend measures to prevent or permit pulse, localized, or growth overfishing. (See Appendix A to Subpart B of this part for explanatory material.)

(7) Significant adverse alterations in environment/habitat conditions increase the possibility that fishing effort will contribute to a stock collapse. Care should be taken to identify the cause of any downward trends in spawning stock sizes or average annual recruitment. (See Appendix A to Subpart B of this part for discussion of indicators of existing or impending overfishing.)

(i) Whether these trends are caused by environmental changes or by fishing effort, the only direct control provided by the Act is to reduce fishing mortality.

(ii) Unless the Council asserts, as supported by appropriate evidence, that reduced fishing effort would not alleviate the problem, the FMP must include measures to reduce fishing mortality regardless of the cause of the low population level.

(iii) If man-made environmental changes are contributing to the downward trends, in addition to controlling effort Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible, and consider whether to take action under section 302(i) of the Act.

(8) There are certain limited exceptions to the requirement of preventing overfishing. Harvesting the major component of a mixed fishery at its optimum level may result in the overfishing of a minor (smaller or less valuable) stock component in the fishery. A Council may decide to permit this type of overfishing if it is demonstrated by analysis (paragraph (f)(5) of this section) that it will result in net benefits to the Nation, and if the Council's action will not cause any stock to require protection under the Endangered Species Act (ESA).

(9) After February 25, 1991, all new and existing FMPs should contain a definition of overfishing for the stock or stock complex managed under the affected FMP.

(i) An FMP or amendment being developed and not yet adopted as final by the Councils at the time these guidelines become effective should contain a definition of overfishing when submitted for approval by the Secretary.

(ii) On or before September 22, 1989, Councils should examine each existing FMP as amended and notify the Regional Director if, in the opinion of the Council, the FMP is currently consistent with the provisions of § 602.11(c) without amendment. Within 90 days of notification, the Secretary will review any such FMP for consistency with § 602.11(c), and notify the Council of concurrence or disagreement.

(iii) On or before November 23, 1990, an amendment should be prepared and submitted to the Secretary for all existing FMPs not approved under paragraph (b)(9)(ii) of this section to add a definition of overfishing for the stock or stock complex managed under the affected FMP.

(d) *MSY.* (1) MSY is the largest average annual catch or yield that can be taken over a significant period of time from each stock under prevailing ecological and environmental conditions.

(2) MSY may be presented as a range of values. One MSY may be specified for a related group of species in a mixed-species fishery. Since MSY is a long-term average, it need not be specified annually, but must be based on the best scientific information available.

(3) MSY may be only the starting point in providing a realistic biological description of allowable fishery removals. MSY may need to be adjusted because of environmental factors, stock peculiarities, or other biological variables, prior to the determination of OY. An example of such an adjustment is determination of ABC.

(e) *ABC.* (1) ABC is a preliminary description of the acceptable harvest (or range of harvests) for a given stock or stock complex. Its derivation focuses on the status and dynamics of the stock, environmental conditions, other ecological factors, and prevailing technological characteristics of the fishery.

(2) When ABC is used, its specification constitutes the first step in deriving OY from MSY. Unless the best scientific information available indicates otherwise (see § 602.12 of this part), ABC should be no higher than the product of the stock's natural mortality rate and the biomass of the exploitable stock. If a threshold has been specified for the stock, ABC must equal zero when the stock is at or below that threshold (see paragraph (c)(2) of this section). ABC may be expressed in numeric or nonnumeric terms.

(f) *OY*—(1) *Definition.* The term "optimum" with respect to the yield from a fishery, means the amount of fish which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and which is prescribed as such on the basis of the maximum sustainable yield from each fishery, as modified by any relevant economic, social, or ecological factors (section 3(18)(b) of the Act).

(2) *Values in determination.* In determining the greatest benefit to the Nation, two values that should be weighed are food production and recreational opportunities (section 3(18)(a) of the Act). They should receive serious attention as measures of benefit when considering the economic, ecological, or social factors used in modifying MSY to obtain OY.

(i) "Food production" encompasses the goals of providing seafood to consumers, maintaining an economically viable fishery, and utilizing the capacity of U.S. fishery resources to meet nutritional needs.

(ii) "Recreational opportunities" includes recognition of the importance of the quality of the recreational fishing

experience, and of the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(3) *Factors relevant to OY.* The Act's definition of OY identifies three categories of factors to be used in modifying MSY to arrive at OY: economic, social, and ecological (section 3(18)(b) of the Act). Not every factor will be relevant in every fishery. For some fisheries, insufficient information may be available with respect to some factors to provide a basis for corresponding modifications to MSY.

(i) *Economic factors.* Examples are promotion of domestic fishing, development of unutilized or underutilized fisheries, satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S.-harvested fish. Some other factors that may be considered are the value of fisheries, the level of capitalization, operating costs of vessels, alternate employment opportunities, and economies of coastal areas.

(ii) *Social factors.* Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery. Among other factors that may be considered are the cultural place of subsistence fishing, obligations under Indian treaties, and world-wide nutritional needs.

(iii) *Ecological factors.* Examples are the vulnerability of incidental or unregulated species in a mixed-species fishery, predator-prey or competitive interactions, and dependence of marine mammals and birds or endangered species on a stock of fish. Equally important are environmental conditions that stress marine organisms, such as natural and man-made changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks.

(4) *Specification.* (i) The "amount of fish" that constitutes the OY need not be expressed in terms of numbers or weight of fish. The economic, social, or ecological modifications to MSY may be expressed by describing fish having common characteristics, the harvest of which provides the greatest overall benefit to the Nation. For instance, OY may be expressed as a formula that converts periodic stock assessments into quotas or guideline harvest levels for recreational, commercial, and other fishing. OY may be defined in terms of an annual harvest of fish or shellfish having a minimum weight, length, or other measurement. OY may also be expressed as an amount of fish taken only in certain areas, or in certain seasons, or with particular gear, or by a specified amount of fishing effort. In the case of a mixed-species fishery, the incidental-species OY may be a function of the directed catch, or absorbed into an OY for related species.

(ii) If a numerical OY is chosen, a range or average may be specified.

(iii) In a fishery where there is a significant discard component, the OY may either include or exclude discards, consistent with the other yield determinations.

(iv) The OY specification can be converted into an annual numerical estimate to establish any TALFF and to analyze impacts of the management regime. There should be a mechanism in an FMP for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery. (See § 602.12(e).)

(v) The determination of OY requires a specification of MSY. However, even where sufficient scientific data as to the biological characteristics of the stock do not exist, or the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size make this concept of limited value, the OY should be based on the best scientific information available.

(5) *Analysis.* An FMP must contain an analysis of how its OY specification was determined (section 303(a)(3) of the Act). It should relate the explanation of overfishing in paragraph (c) of this section to conditions in the particular fishery, and explain how its choice of OY and conservation and management measures will prevent overfishing in that fishery. If overfishing is permitted under paragraph (c)(8) of this section, the analysis must contain a justification in terms of overall benefits and an assessment of the risk of the species or stock component reaching a "threatened" or "endangered" status. A Council must identify those economic, social, and ecological factors relevant to management of a particular fishery, then evaluate them to arrive at the modification (if any) of MSY. The choice of a particular OY must be carefully defined and documented to show that the OY selected will produce the greatest benefit to the Nation.

(g) *OY as a target.* (1) The specification of OY in an FMP is not automatically a quota or ceiling, although quotas may be derived from the OY where appropriate. OY is a target or goal; an FMP must contain conservation and management measures, and provisions for information collection, that are designed to achieve OY. These measures should allow for practical and effective implementation and enforcement of the management regime, so that the harvest is allowed to reach but not to exceed OY by a substantial amount. The Secretary has an obligation to implement and enforce the FMP so that OY is achieved. If management measures prove unenforceable—or too restrictive or not rigorous enough to realize OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification.

(2) Exceeding OY does not necessarily constitute overfishing, although they might coincide. Even if no overfishing resulted, continual harvest at a level above a fixed-value OY would violate national standard 1 because OY was exceeded (not achieved) on a continuing basis.

(3) Part of the OY may be held as a reserve to allow for uncertainties in estimates of stock size and of DAH or to solve operational problems in achieving (but not exceeding) OY. If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to domestic or foreign fishermen, if necessary.

(h) *OY and foreign fishing.* Section 201(d) of the Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States.

(1) *DAH.* Councils must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus.

(2) *DAP.* Each FMP must identify the capacity of U.S. processors. It must also identify the amount of DAP, which is the sum of two estimates:

(i) The amount of U.S. harvest that domestic processors will process. This estimate may be based on historical performance and on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information; and

(ii) The amount of fish that will be harvested by domestic vessels, but not processed (*e.g.*, marketed as fresh whole fish, used for private consumption, or used for bait).

(3) *JVP.* When DAH exceeds DAP, the surplus is available for JVP. JVP is derived from DAH.

§ 602.12 National Standard 2—Scientific Information.

(a) *Standard 2.* Conservation and management measures shall be based upon the best scientific information available.

(b) *FMP development.* The fact that scientific information concerning a fishery is incomplete does not prevent the preparation and implementation of an FMP (see related §§ 602.13(d)(2) and 602.17(b)).

(1) Scientific information includes, but is not limited to, information of a biological, ecological, economic, or social nature. Successful fishery management depends, in part, on the timely availability, quality, and quantity of scientific information, as well as on the thorough analysis of this information, and the extent to which the information is applied. If there are conflicting facts or opinions relevant to a particular point, a Council may choose among them, but should justify the choice.

(2) FMPs must take into account the best scientific information available at the time of preparation. Between the initial drafting of an FMP and its submission for final review, new information often becomes available. This new information should be incorporated into the final FMP where practicable; but it is unnecessary to start the FMP process over again unless the information indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures.

(c) *FMP implementation.* (1) An FMP must specify whatever information fishermen and processors will be required or requested to submit to the Secretary. Information about harvest within State boundaries, as well as in the EEZ, may be collected if it is needed for proper implementation of the FMP and cannot be obtained otherwise. The FMP should explain the practical utility of the information specified in monitoring the fishery, in facilitating inseason management decisions, and in judging the performance of the management regime; it should also consider the effort, cost, or social impact of obtaining it.

(2) An FMP should identify scientific information needed from other sources to improve understanding and management of the resource and the fishery.

(3) The information submitted by various data suppliers about the stocks(s) throughout its range or about the fishery should be comparable and compatible, to the maximum extent possible.

(d) *FMP amendment.* FMPs should be amended on a timely basis, as new information indicates the necessity for change in objectives or management measures.

(e) *Stock Assessment and Fishery Evaluation (SAFE) Report.* (1) The SAFE report is a document or set of documents that provides Councils with a summary of the most recent biological condition of species in the fishery management unit (FMU), and the social and economic condition of the recreational and commercial fishing interests and the fish processing industries. It summarizes, on a periodic basis, the best available scientific information concerning the past, present, and possible future condition of the stocks and fisheries being managed under Federal regulation.

(i) The Secretary has the responsibility to assure that a SAFE report or similar document is prepared, reviewed annually, and changed as necessary for each FMP. The Secretary or Councils may utilize any combination of talent from Council, State, Federal, university, or other sources to acquire and analyze data and produce the SAFE report.

(ii) The SAFE report provides information to the Councils for determining annual harvest levels from each stock, documenting significant trends or changes in the resource and fishery over time, and assessing the relative success of existing State and Federal fishery management programs. In addition, the SAFE report may be used to update or expand previous environmental and regulatory impact documents, and ecosystem and habitat descriptions.

(iii) Each SAFE report must be scientifically based, and cite data sources and interpretations.

(2) Each SAFE report should contain information on which to base harvest specifications (see Appendix A to Subpart B of this part for examples).

(3) Each SAFE report should contain information on which to assess the social and economic condition of the persons and businesses that rely on the use of fish resources, including fish processing industries (see Appendix A to Subpart B of this part for examples).

(4) Each SAFE report may contain additional economic, social, and ecological information pertinent to the success of management or the achievement of objectives of each FMP (see Appendix A to Subpart B of this part for examples).

§ 602.13 National Standard 3—Management Units.

(a) *Standard 3.* To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(b) *General.* The purpose of this standard is to induce a comprehensive approach to fishery management. The geographic scope of the fishery, for planning purposes, should cover the entire range of the stocks(s) of fish, and not be overly constrained by political boundaries. Wherever practicable, an FMP should seek to manage interrelated stocks of fish.

(c) *Unity of management.* Cooperation and understanding among entities concerned with the fishery (e.g., Councils, States, Federal government, international commissions, foreign nations) are vital to effective management. Where management of a fishery involves multiple jurisdictions, coordination among the several entities should be sought in the development of an FMP. Where a range overlaps Council areas, one FMP to cover the entire range is preferred. The Secretary designates which Council or Councils will prepare the FMP, under section 304(f) of the Act.

(d) *Management unit.* The term "management unit" means a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives.

(1) *Basis.* The choice of a management unit depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives. For example:

(i) *Biological*—could be based on a stock(s) throughout its range.

(ii) *Geographic*—could be an area.

(iii) *Economic*—could be based on a fishery supplying specific product forms.

(iv) *Technical*—could be based on a fishery utilizing a specific gear type or similar fishing practices.

(v) *Social*—could be based on fishermen as the unifying element, such as when the fishermen pursue different species in a regular pattern throughout this year.

(vi) *Ecological*—could be based on species that are associated in the ecosystem or are dependent on a particular habitat.

(2) *Conservation and management measures.* FMPs should include conservation and management measures for that part of the management unit within U.S. water, although the Secretary can ordinarily implement

them only within the EEZ. The measures need not be identical for each geographic area within the management unit, if the FMP justifies the differences. A management unit may contain, in addition to regulated species, stocks of fish for which there is not enough information available to specify MSY and OY or to establish management measures, so that data on these species may be collected under the FMP.

(e) *Analysis.* To document that an FMP is as comprehensive as practicable, it should include discussions of the following:

(1) The range and distribution of the stocks, as well as the patterns of fishing effort and harvest.

(2) Alternative management units and reasons for selecting a particular one. A less-than-comprehensive management unit may be justified if, for example, complementary management exits or is planned for a separate geographic area or for a distinct use of the stocks, or if the unmanaged portion of the resource is immaterial to proper management.

(3) Management activities and habitat programs of adjacent States and their effects on the FMP's objectives and management measures. Where State action is necessary to implement measures within State waters to achieve FMP objectives, the FMP should identify what State action is necessary, discuss the consequences of State inaction or contrary action, and make appropriate recommendations. The FMP should also discuss the impact that Federal regulations will have on State management activities.

(4) Management activities of other countries having an impact on the fishery, and how the FMP's management measures are designed to take into account these impacts. International boundaries may be dealt with in several ways. For example:

(i) By limiting the management unit's scope to that portion of the stock found in U.S. waters;

(ii) By estimating MSY for the entire stock and then basing the determination of OY for the U.S. fishery on the portion of the stock within U.S. waters; or

(iii) By referring to treaties or cooperative agreements.

§ 602.14 National Standard 4—Allocations.

(a) *Standard 4.* Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be: (1) Fair and equitable to all such fishermen; (2) reasonably calculated to promote conservation; and (3) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(b) *Discrimination among residents of different States.* An FMP may not differentiate among U.S. citizens, nationals, resident aliens, or corporations on the basis of their State of residence. An FMP may not incorporate or rely on a State statute or regulation that discriminates against residents of another State. Conservation and management measures that have different effects on persons in various geographic locations are permissible, if they satisfy the other guidelines under standard 4. Examples of these precepts are:

(1) An FMP that restricted fishing in the FCZ to those holding a permit from State X would violate standard 4 if State X issued permits only to its own citizens.

(2) An FMP that closed a spawning ground might disadvantage fishermen living in the State closest to it, because they would have to travel farther to an open area, but the closure could be justified under standard 4 as a conservation measure with no discriminatory intent.

(c) *Allocation of fishing privileges.* An FMP may contain management measures that allocate fishing privileges if such measures are necessary or helpful in furthering legitimate objectives or in achieving the OY, and if the measures conform with paragraphs (c)(3) (i) through (iii) of this section.

(1) *Definition.* An "allocation" or "assignment" of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of standard 4. Adoption of an FMP that merely perpetuates existing fishing practices may result in an allocation, if those practices directly distribute the opportunity to participate in the fishery. Allocations of fishing privileges include, for example, per-vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, assignment of ocean areas to different gear users, and limitation of permits to a certain number of vessels or fishermen.

(2) *Analysis of allocations.* Each FMP should contain a description and analysis of the allocations existing in the fishery and of those made in the FMP. The effects of eliminating an existing allocation system should be examined. Allocation schemes considered but rejected by the Council should be included in the discussion. The analysis should relate the recommended allocations to the FMP's objectives and OY specification, and discuss the factors listed in paragraph (c)(3) of this section.

(3) *Factors in making allocations.* An allocation of fishing privileges must be fair and equitable, must be reasonably calculated to promote conservation, and must avoid excessive shares. These tests are explained in paragraphs (c)(3) (i) through (iii) of this section:

(i) *Fairness and equity.* (A) An allocation of fishing privileges should be rationally connected with the achievement of OY or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause. For instance, an FMP objective to preserve the economic status quo cannot be achieved by excluding a group of long-time participants in the fishery. On the other hand, there is a rational connection between an objective of harvesting shrimp at their maximum size and closing a nursery area to trawling.

(B) An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as "fair and equitable," if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo. Where relevant, judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable.

(ii) *Promotion of conservation.* Numerous methods of allocating fishing privileges are considered "conservation and management measures" under section 303 of the Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or it may promote conservation (in the sense of wise use) by optimizing the yield, in terms of size, value, market mix, price,

or economic or social benefit of the product.

(iii) *Avoidance of excessive shares.* An allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.

(iv) *Other factors.* In designing an allocation scheme, a Council should consider other factors relevant to the FMP's objectives. Examples are economic and social consequences of the scheme, food production, consumer interest, dependence on the fishery by present participants and coastal communities, efficiency of various types of gear used in the fishery, transferability of effort to and impact on other fisheries, opportunity for new participants to enter the fishery, and enhancement of opportunities for recreational fishing.

§ 602.15 National Standard 5—Efficiency.

(a) *Standard 5.* Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(b) *Efficiency in the utilization of resources*—(1) *General.* The term "utilization" encompasses harvesting, processing, and marketing, since management decisions affect all three sectors of the industry. The goal of promoting efficient utilization of fishery resources may conflict with other legitimate social or biological objectives of fishery management. In encouraging efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society: given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable.

(2) *Efficiency.* In theory, an efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel. Efficiency in terms of aggregate costs then becomes a conservation objective, where "conservation" constitutes wise use of all resources involved in the fishery, not just fish stocks.

(i) In an FMP, management measures may be proposed that allocate fish among different groups of individuals or establish a system of property rights. Alternative measures examined in searching for an efficient outcome will result in different distributions of gains and burdens among identifiable user groups. An FMP should demonstrate that management measures aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency.

(ii) Management regimes that allow a fishery to operate at the lowest possible cost (e.g. fishing effort, administration, and enforcement) for a particular level of catch and initial stock size are considered efficient. Restrictive measures that unnecessarily raise any of those costs move the regime toward inefficiency. Unless the use of inefficient techniques or the creation of redundant fishing capacity contributes to the attainment of other social or biological objectives, an FMP may not contain management measures that impede the use of cost-effective techniques of harvesting, processing, or marketing, and should avoid creating strong incentives for excessive investment in private sector fishing capital and labor.

(c) *Limited access.* A "system for limiting access," which is an optional measure under section 303(b) of the Act, is a type of allocation of fishing privileges that may be used to promote economic efficiency or conservation. For example, limited access may be used to combat overfishing, overcrowding, or overcapitalization in a fishery to achieve OY. In an unutilized or underutilized fishery, it may be used to reduce the chance that these conditions will adversely affect the fishery in the future, or to provide adequate economic return to pioneers in a new fishery. In some cases, limited entry is a useful ingredient of a conservation scheme, because it facilitates application and enforcement of other management measures.

(1) *Definition.* Limited access (or limited entry) is a management technique that attempts to limit units of effort in a fishery, usually for the purpose of reducing economic waste, improving net economic return to the fishermen, or capturing economic rent for the benefit of the taxpayer or the consumer. Common forms of limited access are licensing of vessels, gear, or fishermen to reduce the number of units of effort, and dividing the total allowable catch into fishermen's quotas (a stock-certificate system). Two forms (i.e., Federal fees for licenses or permits in excess of administrative costs, and taxation) are not permitted under the Act.

(2) *Factors to consider.* The Act ties the use of limited access to the achievement of optimum yield. An FMP that proposes a limited access system must consider the factors listed in section 303(b)(6) of the Act and in § 602.14(c)(3) of these guidelines. In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Act's limitation on returning economic rent to the public under section 304(d)(1). The FMP should also discuss the costs of achieving an appropriate distribution of fishing privileges.

(d) *Analysis.* An FMP should discuss the extent to which overcapitalization, congestion, economic waste, and inefficient techniques in the fishery reduce the net benefits derived from the management unit and prevent the attainment and appropriate allocation of OY. It should also explain in terms of the FMP's objectives any restriction placed on the use of efficient techniques of harvesting, processing, or marketing. If during FMP development the Council considered imposing a limited-entry system, the FMP should analyze the Council's decision to recommend or reject limited access as a technique to achieve efficient utilization of the resources of the fishing industry.

(e) *Economic allocation.* This standard prohibits only those measures that distribute fishery resources among fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose. Where conservation and management measures are recommended that would change the economic structure of the industry or the economic conditions under which the industry operates, the need for such measures must be justified in light of the biological, ecological, and social objectives of the FMP as well as the economic objectives.

§ 602.16 National Standard 6—Variations and Contingencies.

(a) *Standard 6.* Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(b) *Conservation and management.* Each fishery exhibits unique uncertainties. The phrase "conservation and management" implies the wise use of fishery resources through a management regime that includes some protection against these uncertainties. The particular regime chosen must be flexible enough to allow timely response to resource, industry, and other national and regional needs. Continual data acquisition and analysis will help the development of management measures to compensate for variations and to reduce the need for substantial buffers. Flexibility in the management regime and the regulatory process will aid in responding to contingencies.

(c) *Variations.* (1) In fishery management terms, variations arise from biological, social, and economic occurences, as well as from fishing practices. Biological uncertainties and lack of knowledge can hamper attempts to estimate stock size and strength, stock location in time and space, environmental/habitat changes, and ecological interactions. Economic uncertainty may involve changes in foreign or domestic market conditions, changes in operating costs, drifts toward overcapitalization, and economic perturbations caused by changed fishing patterns. Changes in fishing practices, such as the introduction of new gear, rapid increases or decreases in harvest effort, new fishing strategies, and the effects of new management techniques, may also create uncertainties. Social changes could involve increases or decreases in recreational fishing, or the movement of people into or out of fishing activities due to such factors as age or educational opportunities.

(2) Every effort should be made to develop FMPs that discuss and take into account these vicissitudes. To the extent practicable, FMPs should provide a suitable buffer in favor of conservation. Allowances for uncertainties should be factored into the various elements of an FMP. Examples are:

(i) *Reduce OY.* Lack of scientific knowledge about the condition of a stock(s) could be reason to reduce OY.

(ii) *Establish a reserve.* Creation of a reserve may compensate for uncertainties in estimating domestic harvest, stock conditions, or environmental factors.

(iii) *Adjust management techniques.* In the absence of adequate data to predict the effect of a new regime, and to avoid creating unwanted variations, a Council could guard against producing drastic changes in fishing patterns, allocations, or practices.

(iv) *Highlight habitat conditions.* FMPs may address the impact of pollution and the effects of wetland and estuarine degradation on the stocks of fish; identify causes of pollution and habitat degradation and the authorities having jurisdiction to regulate or influence such activities; propose recommendations that the Secretary will convey to those authorities to alleviate such problems; and state the views of the Council on unresolved or anticipated issues.

(d) *Contingencies.* Unpredictable events—such as unexpected resource surges or failures, fishing effort greater than anticipated, disruptive gear conflicts, climatic conditions, or environmental catastrophes—are best handled by establishing a flexible management regime that contains a range of management options through which it is possible to act quickly without amending the FMP or even its regulations.

(1) The FMP should describe the management options and their consequences in the necessary detail to guide the Secretary in responding to changed circumstances, so that the Council preserves its role as policy-setter for the fishery. The description enable the public to understand what may happen under the flexible regime, and to comment on the options.

(2) FMPs should include criteria for the selection of management measures, directions for their application, and mechanisms for timely adjustment of management measures comprising the regime. For example, an FMP could include criteria that allow the Secretary to open and close seasons, close fishing grounds, or make other adjustments in management measures.

(3) Amendment of a flexible FMP would be necessary when circumstances in the fishery change substantially, or when a Council adopts a different management philosophy and objectives.

§ 602.17 National Standard 7—Costs and Benefits.

(a) *Standard 7.* Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) *Necessity of Federal management—(1) General.* The principle that not every fishery needs regulation is implicit in this standard. The Act does not require Councils to prepare FMPs for each and every fishery—only for those where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. For example, the need to collect data about a fishery is not, by itself, adequate justification for preparation of an FMP, since there are less costly ways to gather the data (see § 602.13(d)(2)). In some cases, the FMP preparation process itself, even if it does not culminate in a document approved by the Secretary, can be useful in supplying a basis for management by one or more coastal States.

(2) *Criteria.* In deciding whether a fishery needs management through regulations implementing an FMP, the following general factors should be considered, among others:

(i) The importance of the fishery to the Nation and to the regional economy.

(ii) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition.

(iii) The extent to which the fishery could be or is already adequately managed by States, by State/Federal programs, by Federal regulations pursuant to FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the Act.

(iv) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.

(v) The economic condition of a fishery and whether an FMP can produce more efficeint utilization.

(vi) The needs of a developing fishery, and whether an FMP can foster orderly growth.

(vii) The costs associated with an FMP, balanced against the benefits (see paragraph (d) of this section as a guide).

(c) *Alternative management measures.* Management measures should not impose unnecessary burdens on the economy, on individuals, on private or public organizations, or on Federal, State, local governments. Factors such as fuel costs, enforcement costs, or the burdens of collecting data may well suggest a preferred alternative.

(d) *Analysis.* The supporting analyses for FMPs should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to the industry of compliance. In determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated. This requirement need not produce an elaborate, formalistic cost/benefit analysis. Rather, an evaluation of effects and costs, especially of differences among workable alternatives including the status quo, is adequate. If quantitative estimates are not possible, qualitative estimates will suffice.

(1) *Burdens.* Management measures should be designed to give fishermen the greatest possible freedom of action in conducting business and pursuing recreational opportunities that are consistent with ensuring wise use of the resources and reducing conflict in the fishery. The type and level of burden placed on user groups by the regulations need to be identified. Such an examination should include, for example: capital outlays; operating and maintenance costs; reporting costs; administrative, enforcement, and information costs; and prices to consumers. Management measures may shift costs from one level of government to another, from one part of the private sector to another, or from the government to the private sector.

Redistribution of costs through regulations is likely to generate controversy. A discussion of these and any other burdens placed on the public through FMP regulations should be a part of the FMP's supporting analyses.

(2) *Gains.* The relative distribution of gains may change as a result of instituting different sets of alternatives, as may the specific type of gain. The analysis of benefits should focus on the specific gains produced by each alternative set of management measures, including the status quo. The benefits to society that result from the alternative management measures should be identified, and the level of gain assessed.

Appendix A to Subpart B—Explanatory Material

Purpose of Appendix

The purpose of the Appendix is to preserve, as codified reference, useful explanatory material and supplementary policy rationale originally published as preamble to the various editions of the proposed and final 50 CFR Part 602 rules.

Overview of Approach

The guidelines are designed to allow for innovative policy evolution in response to new biological, social, economic, or ecological circumstances, and set out the benchmarks of current fishery management policy under the Act. NOAA believes the guidelines should supply the Councils, as fishery management planners, a means to assess their work in developing and documenting their decisions. To that end, certain sections of the guidelines specifically address requirements and options for contents of an FMP, supplementing and drawing into relevant focus provisions of Phase II, *Operational Guidelines for the Fishery Management Process,* February 1988 revision. These sections are usually indicated by the paragraph heading "analysis," within which is given more detailed guidance as to the kind of discussion and examination that an FMP should contain to demonstrate consistency with the standard in question. Words within these sections were carefully chosen to convey levels of effort and information commensurate with need [*e.g.,* "consider," "take into account," "explain," "discuss," "examine," "analyze," "identify."]

Fishery management decisions affect the users of fish resources, the government, and the individual taxpayer/consumer. Members of user groups, those responsible for implementing a fishery management regime, and the general citizenry need to know the reasons for decisions that affect them. Thus, it is important that certain issues (particularly those that are controversial) undergo enough examination and discussion to illuminate the options, demonstrate the rationales, and justify the final choice of management regime. This implicit democratic principle of accountability in government underlies and reinforces the Secretary's statutory responsibility to make informed judgments regarding an FMP's consistency with the national standards. The principle is reflected in the philosophies of the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act (RFA), the Paperwork Reduction Act (PRA), and Executive Order (E.O.) 12291—all of which seek accountability in regulatory action.

The guidelines contain a style guide, which explains the use of specific words to distinguish the advisory, explanatory, or obligatory nature of the guideline language, and presents other words within the precise context of the guidelines. The guidelines seek as much precision as possible in the use of the words "should" and "must". "Must" is used to denote an obligation to act and is used primarily when referring to requirements of the Act, the logical extension thereof, or other applicable law. "Should" is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Act, and is a factor that reviewers will look for in evaluating an FMP.

The guidelines seek to provide options rather than establish requirements. Lists are not intended to be exclusive; they provide examples or illustrations of the kind of information, discussion, or examination/analysis useful in demonstrating consistency with the standard in question. The guidelines also seek to avoid universal application of a specific provision, except as required by law, so that the maximum accommodation to regional or individual fishery characteristics can be achieved within the standards.

The guidelines make clear that FMPs in substantial compliance with the guidelines, the Act, and other applicable law must be approved. The guidelines are meant as a protection for everyone in the FMP system. Their acceptance and use are a matter of practical utility for the Councils and of public commitment of the agency to consistent application of the policies stated. As an aggregation of policies developed through creative Council responses to regional fishery management problems, they are a way of sharing the empirical knowledge gained over the life of the Act. In summary, the guidelines are intended as an aid to decisionmaking, with responsible conservation and management of a valued national resource as the goal.

Overview of the 1989 Revision

Changes made in the guidelines since they were issued in 1983 address national standards 1 and 2 only, and were motivated largely by the need, articulated by the 1986 Fishery Management Study and others, for a conservation standard. Consequently, changes in the guidelines emphasize the resource, not its allocation, and focus on overfishing, not on optimum yield (OY). Importantly, the guidelines do not change the relationship between the two as implied in the Act: While overfishing necessarily violates the Act's requirement to achieve (OY), exceeding OY does not necessarily violate the Act's prohibition of overfishing. If a stock is in good condition, the specification of OY may serve various goals besides prevention of overfishing. Exceeding the OY may interfere with achievement of those goals but not affect the reproductive potential of the stock. On the other hand, if OY is the amount of fish that can safely be removed from the stock, exceeding OY may well constitute overfishing.

The revised guidelines for standard 1 set forth a comprehensive overfishing concept within which each Council must establish a specific, measurable definition of overfishing for each stock or stock complex covered by an FMP. That concept is based on the premise that irreversible damage to a resource's availability to recover in a reasonable period of time is unacceptable, and that fishing on a stock at a level that severely compromises that stock's future productivity is counter to the goals of the Magnuson Act. Councils are provided with the flexibility needed to develop a definition of overfishing appropriate to individual stocks or species, as long as it is defined in a way that allows the Councils and the Secretary to evaluate the condition of the stock relative to the definition. General criteria are set forth as a basis for Secretarial review of the definition; these criteria address the overfishing definition specifically and do not change the Secretary's obligation to review FMPs/amendments for consistency with all the national standards, the Act, and other applicable law.

The revised guidelines for standard 2 describe a Stock Assessment and Fishery Evaluation (SAFE) document or set of documents prepared or aggregated periodically, whereby Councils can obtain an objective overview of the status of stocks and fisheries under management. The SAFE document would ideally include all the types of data necessary for the determination of OY, as well as provide the basis for a Council's treatment of the overfishing/OY relationship. While the Secretary has the responsibility for assuring that the SAFE report is produced, it is not intended to be exclusively authored by NOAA. The report can be produced by any combination of talent from academic, government, or other sources. The report should be reviewed annually, but is not required to be revised annually except as there have been new developments or significant changes in a fishery. The itemized examples of data listed in this Appendix are not mandatory, but—as appropriate to the fishery, taking into consideration the need to establish priorities within budget constraints—the best available data must be addressed. Several Councils currently produce such fishery reviews, which generally provide the kinds of information suggested in this Appendix under Standard 2.

The SAFE report does not necessarily call for new information or new procedures; the intent is to provide, in one reference, an aggregation or a summary of the best biological, social, economic, and ecological information available to a Council when needed: (a) To determine annual harvest levels or OYs for species in each fishery management unit (FMU), and (b) to evaluate the effectiveness of its management in preventing overfishing as defined by the Council. Such a report can provide a useful tracking tool for assessing the relative achievement of FMP objectives by

establishing a time-series data base indicating the relative health of stocks and the interests dependent on them.

Standard 1

Overfishing

Overfishing is a relative term; it cannot be defined in isolation from its biological, social, economic, or ecological consequences, nor from its relationship to given management objectives. The prevention of overfishing has as its general goal the protection of a stock's productive capacity.

Significant downward trends in spawning stock size or average annual recruitment to the fishery may signal that overfishing is occurring, although such trends can also be symptomatic of other phenomena, for example the development of a new fishery. Ascertaining whether these trends signal overfishing is a judgment based on scientific stock assessment, which in turn may be based on data obtained from harvesters and processors (through logbooks, catch samples, interviews, weigh-out slips, etc.), resource surveys, or other scientific research.

NOAA also recognizes that a decline in stock size or abundance may occur independent of fishing pressure and that adverse changes in essential habitat may increase the risk that fishing effort will contribute to a stock collapse. Regardless of the cause of a decline, however, the Act limits a Council's authority in addressing the situation. The only direct control available under the Act is to adjust fishing mortality, which may be accomplished in several ways (*e.g.*, by establishing or adjusting time/area closures or limits on catch, mesh size, vessel days, or the number of vessels entering the fishery). If man-made environmental changes are contributing to the downward trends, in addition to controlling effort Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible, and consider whether to take action under section 302(i) of the Act.

Different fishing patterns can produce a variety of effects on local and areawide abundance, availability, size, and age composition of a stock. Some of these fishing patterns have been called "growth," "localized," or "pulse" overfishing; however, these patterns are not necessarily overfishing under national standard 1. A Council may recommend conservation and management measures to prevent or permit these effects, depending on the objectives of a particular FMP and the specific definition of overfishing established for the stock or stock complex under management.

The term "growth overfishing" often refers to the practice of taking too many fish from a cohort (year class) before the cohort has attained its maximum potential biomass. The term can also refer to harvesting at a fishing mortality rate in excess of that which maximizes the expected yield from a cohort given a particular age or size of recruitment. "Growth overfishing" can be practiced deliberately, for example to capitalize on demand for a smaller product, or inadvertently, for example by using nonselective gear. "Growth overfishing" may be discouraged or disallowed by regulating fishing gear or imposing time/area closures, to force fishing on larger or more marketable fish.

"Localized overfishing" occurs when a stock is depleted within a confined portion of its range. For example, this fishing pattern can occur in reef fisheries when concentrated fishing pressure reduces the population of a species or species complex inhabiting a particular reef or reef complex. An important characteristic of this fishing pattern is that it is often temporary; if fishing effort is reduced sufficiently, the remainder of the stock can often repopulate the depleted portion, reversing the condition.

"Pulse overfishing" can be tolerated under certain conditions. For example, it can sometimes be desirable for economic and social reasons to take a large amount of fish in a short time, and then to let the stock recover. In general, the key point in terms of national standard 1 is not so much the pattern of fishing (*e.g.*, pulse vs. sustained) as the rate of fishing mortality and its effect on the long-term capacity of the stock to produce MSY.

As management regimes become more comprehensive, the interrelationships of fishing pressures on target and nontarget (as well as major and minor) species will have to be addressed more directly. In determining allowable fishing levels, Councils should consider all sources of mortality on a stock, including non-targeted fishing, discards, and illegal catch. Because all removals from the stock, whether landed or unlanded, will affect spawning stock biomass levels now or in the near future, Councils should attempt to obtain estimates of all sources of mortality and consider these estimates in adjusting directed fishing levels. While the general expectation is for total fishing mortality on a stock to be managed such that overfishing does not occur, NOAA believes that rational management of multispecies fisheries includes acknowledgement of the fact that overharvesting minor components of these fisheries may be allowable in certain cases. The guidelines emphasize that such cases are characterized by two necessary conditions: (1) That analysis demonstrates positive net benefits to the Nation will result from overfishing the minor component(s), and (2) that such overharvest will not cause any stock to require protection under the Endangered Species Act.

NOAA believes that the overfishing sections of the guidelines are responsive to the findings of the Act and to subsequent studies urging a conservation standard—particularly when read in conjunction with the analysis provisions throughout the guidelines, and with the standard 6 guideline provisions for buffers, reserves, and framework FMP flexibility.

Maximum Sustainable Yield

Much of the past controversy concerning MSY has related to its adequacy as a management goal. As used in the Act, however, calculation of MSY is a only a baseline step in the overall process of determining OY. Recognizing that MSY must represent the underlying biological rationale for determination of OY in a wide variety of fisheries, the guidelines set forth a flexible framework for its calculation. Recognition of the need for flexibility in calculating MSY has come as a result of FMP review experience and Council innovation in adapting this concept to the characteristics of different fisheries.

It is clear that every attempt should be made to satisfy the Act's requirement for specification of MSY. However, there may be cases where scarcity of data or tentativeness of scientific understanding renders MSY specification impossible, or where biological resiliency or high fecundity of some stocks or other fishery characteristic may allow OY to become a descriptive statement only—making a numerical calculation of MSY unnecessary. In such cases, NOAA believes that Congressional intent is served if OY derives from the best biological information available, *e.g.*, the proportional abundance of associated species. Descriptive OYs should be convertible to annual numerical estimates for the purpose of deriving the total allowable level of foreign fishing (TALFF).

As a subsequent step in the process of determining OY, MSY may be adjusted (deviated from) for economic, social, or ecological reasons. One type of adjustment is illustrated by the concept of biologically acceptable catch (ABC), used by some Councils. ABC is an annually determined number that may be set lower or higher than MSY for a number of reasons, *e.g.*, to take advantage of abnormally high recruitment, to allow rebuilding of stocks, or to be conservative when there are inadequate data on the status of the stocks.

Optimum Yield

NOAA believes it important to keep the distinction clear between the two separate parts of standard 1: To prevent overfishing, and to achieve OY. The guidelines are written such that overfishing is an intrinsic limitation on OY; it is built into the OY determination, yet maintains a separate identity as a constraint. For example, exceeding a stock's OY by a small amount typically does not constitute overfishing when the stock is healthy. On the other hand, exceeding OY can coincidentally constitute overfishing when the margins of tolerance are low. Buffers to protect against overfishing because of uncertainty in estimating stock size or domestic harvest may be established in the form of reserves or a reduced OY.

Regardless of whether sustained harvesting at a level above OY constitutes overfishing, such a harvest pattern violates the Act's requirement to achieve OY on a continuing basis. In other words, national standard 1 is violated whenever the level of harvest is consistently and significantly different from OY, irrespective of whether that harvest level is above or below OY. While recognizing that OY might not be achieved every year in practice, NOAA believes that Councils must make every reasonable attempt to see that it is.

The guidelines also state that in the case of a mixed species fishery, the OY for incidental species may be a function of the directed catch, or absorbed into an OY for related species.

NOAA believes that achievement of OY includes giving foreign fishing vessels

reasonable opportunity to harvest the portion of the OY (TALFF) that would not otherwise be harvested by vessels of the United States. However, nothing precludes Councils from setting OY equal to DAH (effectively eliminating TALFF), if circumstances warranting such action are documented. For example, international economic concerns may influence the size of TALFF through their consideration as modifying factors in the determination of OY.

Standard 2

General

Application of this standard affects the operation of all the other standards. The quantity and quality of scientific information influence the establishment of MSY, OY, and management unit composition; they underlie allocative determinations, judgments of efficiency, adjustments for variations and contingencies, and evaluations of costs and benefits. The guidelines address the questions of timeliness, opposing bodies of opinion, and practical utility of the information specified, and emphasize the continuing need for information for monitoring and in-season adjustment decisions under a flexible management regime. A voluntary system of data collection is permissible, but requires a justification under the Paperwork Reduction Act, and is not covered under the Act's confidentiality provision. It is acceptable to collect data within State boundaries when needed for proper implementation of an FMP, but duplication of effort should be avoided. Successful data collection depends on the protection of confidential data, the public trust in that protection, and the public perception of the valid uses of those data. The validity of the entire process may hinge on the cooperative attitudes of constituents, the research community, and the relevant governmental institutions.

Stock Assessment and Fishery Evaluation (SAFE) Report

The SAFE Report provides Councils with a summary of the biological condition of species in the FMU, and the social and economic condition of recreational and commercial fishing interests and fish processing industries. The SAFE report summarizes, on a periodic basis, the best available scientific information concerning the past, present, and possible future condition of the stocks and fisheries being managed under Federal regulation.

(1) Each SAFE report should contain information on which to base harvest specifications, such as:

(a) Estimates of total biomass and/or spawning biomass for each stock in the FMU;

(b) Estimates of the annual surplus production (ASP) and MSY for each stock in the FMU;

(c) Description of the estimated biomass, ASP, and MSY in previous years relative to those estimates for the current or next year;

(d) Description of the model or assumptions on which these estimates are based and a discussion of the reliability of each estimate;

(e) If a stock is depleted, estimated time necessary to allow the stock to rebuild to the MSY-producing level, threshold level, or other specified level under various harvest levels and prevailing environmental conditions; and

(f) Significant changes (if any) in the habitat or ecosystem since it was last described in the FMP, an amendment to the FMP, or previous SAFE report.

(2) Each SAFE report should contain information on which to assess the economic and social condition of persons and businesses that rely on recreational and commercial use of fish resources, including fish processing industries, such as:

(a) Estimate of the amount of fish harvested from each stock in the FMU, by gear type and area, in the most recent 3 years and in the year immediately prior to implementation of the FMP governing fisheries for (or in) the FMU. If applicable, the amount of fish harvested in the same time period by wholly domestic, joint venture, and foreign fisheries;

(b) The approximate exvessel value of commercially harvested fish described in item (1) of this paragraph;

(c) Amounts and estimated value of each type of processed product derived from the harvested fish described in item (1) of this paragraph;

(d) Estimates of the numbers of commercial vessels, by gear type and in terms of individual vessels, involved in each fishery for (or in) the FMU;

(e) Estimates of the number of commercial fishermen employed in each fishery for (or in) the FMU;

(f) The numbers of processing plants, floating and shore based, individual and by product type, involved in processing the harvested fish described in item (1) of this paragraph;

(g) Estimates of the number of individuals employed in the processing plants described in item (6) of this paragraph;

(h) Estimates of the amount of fish harvested by recreational fishermen from the FMU;

(i) Estimates of the numbers of recreational fishermen who harvested fish from the FMU;

(j) Estimates of the number of charter vessels and party boats involved in the recreational fishery; and

(k) The estimated value of the recreational fishery for (or in) the FMU.

(3) Each SAFE report may contain additional economic, social, and ecological information pertinent to the success of management or the achievement of objectives of each FMP, such as:

(a) Enforcement actions taken and penalties assessed and collected over the most recent 3 years under an implemented FMP;

(b) Significant changes (if any) in State regulations pertinent to the FMU and their known or anticipated effects on stocks in the FMU;

(c) Significant changes (if any) in related fisheries which may affect the fishing effort for (or in) the FMU; and

(d) Potential conservation and management problems, their possible causes and solutions.

Standard 3

Standard 3's principle of comprehensive management works well with standard 7's principle of avoiding duplication. The emphasis in the revision is on the scope, composition, and unity of the management unit, and on coordination and cooperation rather than on potential jurisdictional tension. NOAA believes that range-wide planning should encourage active State participation in the planning process, and that such planning will provide clear direction to the States as to what is needed to implement the proposed management regime effectively. This is consistent with Council practice; the result should be greater compatibility between Federal and State management measures.

Because the potential for incompatibility does exist, however, the guidelines require an FMP to discuss the interrelationship between State management activities and the proposed Federal regime. Federal regulations supersede any conflicting State regulations of FCZ fishing (F/V American Eagle v. Alaska, No. 2227 (Alaska, Nov. 21, 1980)). State landing laws and other forms of indirect regulation of FCZ fishing may be affected by implementing an FMP. The required analysis focuses attention on these impacts and on the effect of inconsistent State action on attaining the objectives of the FMP. This latter discussion will assist in determining Secretarial responsibilities under section 306(b) of the Act.

Standard 3 calls for management of a "stock" throughout its range. NOAA feels that the use of the words "stock," "fishery," and "management unit" is significant, and has endeavored to use the appropriate term in the guidelines. A stock may be larger than the fishery, as is the case when only a portion of the stock is actively fished. A fishery may be larger than a stock, when more than one stock is fished together. The management unit may ignore a portion of fishery or stock when it includes a transboundary fishery or when a minor portion of the unit is fished within the area of authority of another Council. Examples are given of the perspectives around which a management unit may be organized.

Standard 4

To assist Councils in making what are usually the most controversial decisions within an FMP, NOAA has tried to confront the human issues surrounding fishery management directly, consistent with its concern for the economic and social consequences of regulation.

The guidelines address the "discrimination among residents of different States" issue as an extension of the Federal privilege and immunities" clause of the U.S. Constitution, which means that Councils may not rely on, nor incorporate within an FMP, a State law that discriminates against residents of a different State. Discrimination is a distinct concept from equity.

Fishery management is essentially a series of allocations among present users, between present and future users, between public and private interests. The guidelines define "allocation" for purposes of the standard as a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete groups of fishermen.

Because only measures that meet the definition will be judged against the standard, this is a critical and sensitive differentiation.

Many management measures may have an *incidental* effect on the fishing privileges enjoyed by different groups of U.S. fishermen. Any quota has a distributive effect on present and future users through its impact on stock maintenance or rebuilding. Area closures may cause practical difficulties for smaller vessels or those located far from open areas. Seasonal quotas create difficulties for those whose economics of operation do not permit a long period of inactivity.

Direct allocations, by contrast, have been made by the several Councils in a variety of FMPs in the past: Quotas by classes of vessels (Atlantic groundfish), quotas for commercial and recreational fishermen (Atlantic mackerel), different fishing seasons for recreational and commercial fishermen (salmon), assignment of ocean areas to different gears (stone crab), and limiting permits to present users (surf clam). These direct allocations were approved under standard 4 because the Councils complied with the three statutory criteria of the standard in constructing their allocation schemes.

The guideline's definition is an attempted middle ground between all measures affecting fishing practices and measures designated as allocations in an FMP. The distribution must be direct and deliberate, but a Council could not disclaim an intent to allocate through a measure that had obvious and inevitable allocative effects.

NOAA believes that the required analysis of allocations and alternative schemes considered—including the status quo—will help to focus attention on the existing distribution of privileges and the alteration of that distribution which Federal management will impose. Each FMP should contain the Council's judgment on fairness and equity, conservation promotion, and possible monopolistic or oligopolistic effects of the proposed allocations.

The guidelines link "fairness" with FMP objectives and OY and acknowledge that fishing rights of treaty Indians and aboriginal Americans should be factored into Council judgments. Rational use of the resource is suggested as one way an allocation scheme may promote conservation. A more visible conservation purpose is illustrated by the moratorium on entry of new vessels into the surf clam fishery, initiated to mitigate a resource crisis in a stock

Standard 5

NOAA believes that, for purposes of standard 5, efficiency can be defined as the ability to produce a desired effect or product (or achieve an objective) with a minimum of effort, costs, or misuse of valuable biological and economic resources. In other words, Councils should choose management measures that achieve the FMP's objectives with minimum cost and burdens on society. NOAA believes that particular care should be taken when considering management of common property resources—where intensive individual market actions risk the "tragedy of the commons," a concept that comprises damage not only to the individual fisherman, but to the very resource on which he depends. Where there are no property rights, the role of government takes on the dimension of stewardship. NOAA also believes that managing at least cost to society and managing at least cost to the fisherman are not mutually exclusive. NOAA reads standards 5 and 7 together; to minimize costs of regulating also means to minimize costs to the industry of compliance.

The guidelines also recognize the difficulty inherent in reconciling particular economic and social needs of industry participants and consumers with this goal of efficiency. For example, maximizing employment opportunities by allowing continued overcapitalization instead of reducing effort might be considered inefficient in terms of an economic goal, but not necessarily in terms of a social goal. Or, when it is necessary to preserve a subsistence way of life or enjoyment of recreational fishing, application of the efficiency standard may not be appropriate. Councils thus may have to choose between—or rank—competing objectives.

NOAA believes that an FMP should not restrict the use of productive and cost-effective techniques of harvesting, processing or marketing, unless such restriction is necessary to achieve the conservation or social objectives of the FMP. For example, the Pacific salmon FMP provides for use of a barbless hook to decrease mortality of sublegal coho and chinook. The high seas salmon FMP requires heads on" landing for fin-clipped coho and chinook to insure recovery of coded wire tags used to establish a needed distribution data base. In both cases, reduction in efficiency was outweighed by the conservation benefit.

Administrative efficiency can be a factor in choosing between management regime alternatives, as well. The Gulf of Mexico shrimp FMP's cooperative Texas closure, for example, increased the effectiveness and efficiency of enforcement.

NOAA chose to address the questions surrounding "limited access" in the context of standard 5 rather than in standard 4, even though limited access, by its nature, is an allocative measure. In fact, the guidelines caution that any limited access system must be consistent with section 303(b)(6) of the Act and the standard 4 guidelines. NOAA believes that placement within standard 5 puts the emphasis more appropriately on concepts of economic efficiency in achieving OY rather than on the contentious issues of right of entry, or limit on effort, per se. The placing of limited access within the standard 5 context does not imply, however, that efficiency is always attained by limited access, nor that limited access is the most desirable method of attaining efficiency, nor that efficiency is the only purpose for limited access, nor that limited entry has always resulted in the benefits listed in the guidelines.

Standard 6

NOAA recognizes that each fishery exhibits unique uncertainties, and that the unpredictable nature of the fishery resource caused by vulnerability to changing conditions and unforeseeable events makes long-term planning difficult. Long-term objectives are more easily attainable in the more stable fisheries. The guidelines clarify that it is possible to compensate for variations by establishing buffers; protection against contingencies is urged through use of flexibility in the regulatory process.

Standard 7

The principles of standard 7 coincide with many earnest and recently intense efforts of NOAA and the Councils to streamline the FMP process. As more FMPs have come on line, the costs of enforcement and of collecting data for monitoring, while reduced per FMP, have increased in total. The rising costs of fishing, due in part to dependence on petroleum-based products, has intensified the need to consider the impact of potentially burdensome regulations. Thus, it has become necessary to be more precise in evaluating the costs to industry and to government, to support comprehensive management, and to work toward a flexible regulatory structure.

NOAA believes that the requirements of E.O. 12291 and other regulatory reform legislation quite appropriately focus attention on the threshold question of the actual need for management through regulation. Even when a Council believes there is an advantage to managing a fishery, growing public concern over excessive Federal regulation of private activities and over the need to reduce the cost of government emphasizes the responsibility to ensure that FMPs are developed only for those fisheries where the need for Federal regulation can be clearly demonstrated. For these reasons, the guidelines propose criteria to assist in making these threshold decisions.

NOAA recognizes that the wide diversity of fisheries and of management objectives increases the difficulties of devising a quantitative cost/benefit analysis for fishery management measures. However, under the guidelines, the types of analyses suggested under standards 4 and 5 would be the first steps in evaluating relative distribution of gains and burdens produced by each alternative set of management measures. While weight of intangibles such as recreational enjoyment, habitat protection, or social dislocation often cannot be expressed in dollar terms, NOAA believes they should be considered and described as explicitly as possible.

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federal register

Monday
July 24, 1989

Part III

Environmental Protection Agency

Pesticides Required To Be Reregistered; List C; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34003; FRL 3619-9]

Pesticides Required To Be Reregistered; List C

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is publishing a list (List C) of pesticide active ingredient cases (consisting of one or more chemically-related active ingredients) that are required to be reregistered under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This is the third in a series of four such lists required by the Act. In addition to listing the pesticides, this notice discusses the significance of inclusion on List C. Inclusion on this list does not affect the registration status of any pesticide product. Publication of List C in the Federal Register initiates a process of accelerated reregistration and data call-in for products containing the listed pesticide active ingredients.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay S. Ellenberger, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Office location and phone number: Room 728, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (1-800-552-8879).

SUPPLEMENTARY INFORMATION:

I. Reregistration of Pesticides

Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, required that all registered pesticides be reregistered in accordance with new standards for registration contained in section 3(c)(5). These include, among other things, a determination by the Agency that the use of the pesticide will not cause unreasonable adverse effects on the environment [3(c)(5) (C) and (D)].

EPA established a Registration Standards process in 1980 to accomplish reregistration. Under this process, the Agency evaluates the existing scientific data base underlying an active ingredient, identifies in a Registration Standard document missing data needed to complete the assessment, and after acquiring all necessary data from registrants, would ultimately make a decision whether to reregister products and under what conditions and restrictions. Under this process, begun in 1980, EPA has evaluated approximately 25 pesticide active ingredients per year, and has, since 1987, initiated rereviews (termed Second Round Reviews) of pesticides with substantially complete data bases at the rate of approximately 10 per year. At that rate, the reregistration of all pesticide products would extend well beyond the year 2000.

II. FIFRA Amendments of 1988

On October 25, 1988, the President signed a new law, the FIFRA Amendments of 1988, which, among other things, makes significant changes in the way EPA will carry out its responsibility to reregister currently registered pesticides. Section 4 of FIFRA, as amended, mandates an accelerated reregistration scheme, to be carried out in five phases over a 9-year period. The thrust of this phased approach is to generate a complete data base for each pesticide product before evaluation by the Agency and reregistration of products. The responsibility for making data available lies with pesticide registrants.

Briefly, FIFRA section 4(c) through (g) establish the following five phases of reregistration:

A. Phase I

1. Identification of active ingredients subject to reregistration. Each product containing an active ingredient that was first registered before November 1, 1984, must be reregistered.

2. Categorization of active ingredients into four lists (A, B, C, and D) according to priorities set by the Act. List A was published in the Federal Register of February 22, 1989 (54 FR 7740). List B was issued by order on April 24, 1989, and was published in the Federal Register of May 25, 1989 (54 FR 22706).

3. Notification to registrants of listed active ingredients of when they must indicate their intention to reregister products (see Phase II for a brief description of the information registrants must furnish).

B. Phase II

1. Responses by registrants indicating whether they intend to seek reregistration.

2. Identification by registrants of applicable data requirements based upon regulations issued under FIFRA sec. 3, and of missing or inadequate studies.

3. Commitment by registrants to support the reregistration of their pesticide products by submission of missing studies or replacement of inadequate existing studies.

C. Phase III

1. Submission by registants of summaries of previously submitted studies and reformats of certain studies according to guidance to be issued by the Agency.

2. Additional commitment by registrants to fill all applicable data requiremens identified by the registrant.

D. Phase IV

1. Review by the Agency of the Phase II and III submissions.

2. Independent determination by the Agency of outstanding data requirements applying to each active ingredient.

3. Notification to registrants of the additional data requirements.

4. Commitment by registrants to fulfill those requirements.

E. Phase V

1. Review by the Agency of all data concerning an active ingredient (both existing studies deemed to be adequate and new studies generated by registrants).

2. Determination by the Agency whether products containing the active ingredient may be reregistered based upon the data reviewed.

3. Submission by registrants of product-specific data if necessary.

4. Reregistration of products, or other appropriate regulatory action.

All pesticide active ingredients for which a Registration Standard was not issued before December 24, 1988, are subject to the requirements of the phased approach outlined above.

III. Lists of Pesticides

A. What the Law Requires

Under Phase I, the Agency is required to develop and publish in the Federal Register four lists of pesticide active ingredients that must be reregistered. The first (List A) is a list of active ingredient cases for which Registration Standards had been issued as of December 24, 1988, the effective date of the new law. That list was published in the Federal Register of February 22, 1989 (54 FR 7740).

The other three lists (Lists B, C, and D) include each active ingredient contained in a product first registered before November 1, 1984, for which a Registration Standard has not been issued. These lists are to be issued by the Agency in groups of 150 active ingredient cases in April and July, 1989, (Lists B and C) with a final list of remaining active ingredients in October 1989 (List D). Each list is to be published in the Federal Register, and a copy will

be sent by certified mail to each registrant having a product containing a chemical on each list.

B. Statutory Priorities for Listing

FIFRA sec. 4(c)(1) sets out certain priorities that the Agency must consider to determine whether to include a pesticide active ingredient on List B, C, or D. The Agency identified additional priority criteria highlighting concerns that were not specified in FIFRA sec. 4(c)(1).

In the **Federal Register** notice for List B, the Agency described the statutory and other criteria it used in determining List B active ingredients. Briefly, these included:

1. Active ingredients with food or feed uses.
2. Active ingredients that are potential ground water contaminants of toxicological concern.
3. Active ingredients with uses leading to potential residues in fish or shellfish.
4. Active ingredients with significant data gaps.
5. Active ingredients of concern for worker exposure because of agricultural, greenhouse, or nursery use.
6. Active ingredients currently in Special Review.
7. Active ingredients whose use is restricted to certified applicators.
8. Active ingredients of concern because of potential dibenzodioxin or dibenzofuran contamination.
9. Active ingredients of concern for possible effects on non-target or endangered species.

Because each criterion used to create List B is broadly applicable to a large number of active ingredients, application of the criteria created a larger pool of candidates for List B than the 150 active ingredient cases directed by the Act. Some active ingredients meeting statutory criteria are therefore included among the 150 active ingredient cases on List C being published today. In particular, List C includes a number of active ingredient cases having indirect food or feed uses. List D will include all remaining active ingredients.

C. Format of List C

List C includes 150 active ingredient cases, some of which are single active ingredients, and others of which are groups of active ingredients. The following information is given for each active ingredient case:

1. The name of the active ingredient or case. The name is one of the following: (a) The accepted common name of a single active ingredient; (b) the chemical name of the single active ingredient, if brief; (c) a case name descriptive of the members of the case as a whole; or (d) in a few instances, a trade name used because the common and chemical names were too long to include efficiently. In this last case, the trade name is identified in the listing with an asterisk.
2. The number of the active ingredient case. This is an internal reference number identifying the active ingredient case.
3. The Chemical Abstracts Service (CAS) number of each individual chemical included in List C. In a few cases, CAS numbers have not been assigned and so are not given.
4. The acceptable common name (or chemical name if there is no acceptable common name) of each individual chemical included within each case.

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ACTIVE INGREDIENTS, LIST C

Case Name	Case	CAS No.	Chemical/Common Name
Abietylamine derivatives	3001	1446-61-3	Dehydroabietylamine
		2026-24-6	Dehydroabietylamine acetate
Accel (*)	3002	2312-73-4	N-(Phenylmethyl)-9-(tetrahydro-2H-pyran-2-yl)-9H-purin-6-amine
Aliphatic alkyl quaternaries	3003	68424-92-0	Alkyl trimethyl ammonium bromide
		68391-03-7	Alkyl trimethyl ammonium chloride
		61790-41-8	(Soya alkyl) trimethyl ammonium chloride
		999-81-5	2- Chloroethyl trimethyl ammonium chloride
		68187-63-3	3- Alkoxy-2-hydroxypropyl trimethyl ammonium chloride
		68514-95-4	Dialkyl dimethyl ammonium chloride
		61789-77-3	Di(coco alkyl) dimethyl ammonium chloride
		68953-58-2	Di(tallow alkyl) dimethyl ammonium bentonite
		7173-51-5	Didecyl dimethyl ammonium chloride
		5538-94-3	Dioctyl dimethyl ammonium chloride
		32426-11-2	Octyl decyl dimethyl ammonium chloride
		10361-16-7	Octyl dodecyl dimethyl ammonium chloride
		61788-99-6	(Soya alkyl) dimethyl ethyl ammonium bromide
		124-03-8	Cetyl dimethyl ethyl ammonium bromide
			Alkenyl dimethyl ethyl ammonium bromide
		68607-28-3	(Oxydiethyleneglycol)bis(coco alkyl)dimethyl ammonium chloride
		70750-47-9	(Coco alkyl) bis(2-hydroxyethyl) methyl ammonium chloride
			Dodecyl bis(hydroxyethyl)dioctyl ammonium phosphate
			Dodecyl bis(2-hydroxyethyl) octyl hydrogen ammonium chloride
Aliphatic solvents	3004	8012-95-1	Aliphatic petroleum hydrocarbons
		8008-20-6	Kerosene
		8012-95-1	Mineral oil
		8032-32-4	Mineral spirits
			Isoparaffinic hydrocarbons
Alkyl amino betaine	3005	68424-94-2	Alkyl amino betaine
Alkyl dichlorobenzyl quaternaries	3006	8023-53-8	Alkyl dimethyl 3,4-dichlorobenzyl ammonium chloride
		102-30-7	Dodecyl dimethyl 3,4-dichlorobenzyl ammonium chloride
Alkyl diethanolamides	3007		Alkyl diethanolamide
		68603-42-9	(Coco alkyl)diethanolamides
		136-26-5	N,N- Bis(2-hydroxyethyl)decanamide
		120-40-1	N,N- Bis(2-hydroxyethyl)dodecanamide
Alkyldiethanolamines, and salts	3008	71786-60-2	Alkyl-N,N-bis(2-hydroxyethyl)amine
			Alkyl-N,N-bis(2-hydroxyethyl)amine acetate
Alkyldipropoxyamines	3009	68516-06-3	Alkyl di(2-hydroxypropyl)amine
Alkyl imidazolines, and imidazolinium quaternaries	3010	30968-43-5	2- Heptadecenyl-2-imidazoline
		82078-98-6	Heptadecenyl imidazolinium chloride
		27136-73-8	1-(2- Hydroxyethyl)-2-heptadecenyl-2-imidazoline
			1- Heptadecenyl-2-(2-hydroxyethyl)-2-imidazolinium chloride
		53466-91-4	Heptadecyl hydroxyethyl imidazoline
		53466-92-5	Heptadecyl hydroxyethylimidazolinium chloride
			1- Ethyl-2-heptadecenyl-1-(2-hydroxyethyl)-2-imidazolinium bromide
		61791-39-7	2-(Tall oil alkyl)-1-(2-hydroxyethyl)-2-imidazoline
			2-(Tall oil alkyl)-1-(2-hydroxyethyl)-2-imidazoline acetate
		61791-52-4	2-(Coco alkyl)-1-benzyl-1-(2-hydroxyethyl)-2-imidazolinium chloride
		68309-34-2	2-(Tall oil alkyl)-1-benzyl-1-(2-hydroxethyl)-2-imidazolinium chloride
		13470-50-3	2- Heptadecyl-1-methyl-1-(2-(stearoylamido)ethyl)-2-imidazolinium methyl sulfate

Alkyl isoquinolinium quaternaries	3011	53466-68-5	2- Alkyl isoquinolinium bromide Alkyl methyl isoquinolinium chloride
Alkyl morpholinium quaternaries	3012		N- Alkyl-N-ethyl morpholinium ethyl sulfate
		78-21-7	N- Cetyl-N-ethyl morpholinium ethyl sulfate
		61791-34-2	N-(Soya alkyl)-N-ethyl morpholinium ethyl sulfate
Alkyl pyridines, and pyridinium quaternaries	3013	68391-11-7	Alkyl pyridines
		140-72-7	Cetyl pyridinium bromide
		123-03-5	Cetyl pyridinium chloride
Alkyl trimethylenediamines, and derivs.	3014	68155-37-3	1-(Alkyl amino)-3-aminopropane
		61791-63-7	1-((Coco alkyl)amino)-3-aminopropane
		61791-64-8	1-((Coco alkyl)amino)-3-aminopropane acetates
		68188-29-4	1-((Coco alkyl)amino)-3-aminopropane benzoate
		68155-43-1	1-((Coco alkyl)amino)-3-aminopropane hydroxyacetate
		68155-42-0	1-((Coco alkyl)amino)-3-aminopropane adipate
		61791-67-1	1-((Soya alkyl)amino)-3-aminopropane
			1-((Coco alkyl)amino)-3-aminopropane diacetate
		68911-78-4	1-((Tallow alkyl)amino)-3-aminopropane diacetate
		83542-86-3	N-cis-9- Octadecenyl-1,3-propanediamine monogluconate
Allantoin, and derivs.	3015	97-59-6	Allantoin
		1317-25-5	Aluminum chlorohydroxy allantoinate
4-t-Amylphenol, and salts	3016	80-46-6	4-(1,1- Dimethylpropyl)phenol
		53404-18-5	Potassium 4-tert-amylphenate
		31366-95-7	Sodium 4-tert-amylphenate
Ancymidol	3017	12771-68-5	alpha- Cyclopropyl-alpha-(p-methoxyphenyl)-5-pyrimidine-methanol
p-Anethole	3018	104-46-1	10- Methoxy-4-propenyl benzene
Animal oils	3019	8001-85-2	Bone oil
		8016-13-5	Fish oil
Aromatic solvents	3020	68477-31-6	Aromatic petroleum derivative solvent
		68602-80-2	Chevron 100
		64742-94-5	Heavy aromatic naphtha
		1330-20-7	Xylene
			Xylene range aromatic solvent
Arsenal (*)	3021	81510-83-0	2-[4,5- Dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridinecarboxylic acid, monoisopropylamine
Azacosterol HCl	3022	1249-84-9	20,25- Diazachlolestenol dihydrochloride
Azadioxabicyclooctane derivs.	3023	6542-37-6	5- Hydroxymethyl-1-aza-3,7-dioxabicyclo[3.3.0]octane
		59720-42-2	5- Hydroxymethoxymethyl-1-aza-3,7-dioxabicyclo[3.3.0] octane
			5- Hydroxypoly(methyleneoxy)methyl-1-aza-3,7-dioxabicyclo[3.3.0]octane
Benax 2-A-1 (*)	3024	7575-62-4	Disodium 4-dodecyl-2,4'-oxydibenzenesulfonate
		5136-51-6	Disodium 2,2'-oxybis(4-dodecylbenzenesulfonate)
Benzaldehyde	3025	100-52-7	Benzaldehyde
Benzisothiazolin-3-one	3026	2634-33-5	1,2- Benzisothiazolin-3-one
Benzyl bromoacetate	3027	5437-45-6	Benzyl bromoacetate
Bioban P-1487 (*)	3028	2224-44-4	4-(2- Nitrobutyl)morpholine
		1854-23-5	4,4'-(2- Ethyl-2-nitrotrimethylene)dimorpholine
Biobor (*)	3029	2665-13-6	2,2'-(1- Methyltrimethylenedioxy)bis(4-methyl-1,3,2-dioxaborinane
		14697-50-8	2,2'- Oxybis(4,4,6-trimethyl-1,3,2-dioxaborinane)
Bis(bromoacetoxy)butene	3030	20679-58-7	1,4- Bis(bromoacetoxy)-2-butene
Bis(propylsulfonyl)ethene	3031	1113-14-0	trans-1,2- Bis(propylsulfonyl)ethene

Bromohydroxyacetophenone	3032	2491-38-5	2- Bromo-4-hydroxyacetophenone
Busan 74 (*)	3033	29803-57-4	S-(2- Hydroxypropyl)thiomethanesulfonate
Busan 77 (*)	3034	31512-74-0	Poly(oxyethylene(dimethyliminio)ethylene (dimethylimino)ethylene dichloride)
4-t-Butylphenol, and salts	3035	98-54-4	4-(1,1- Dimethylethyl)phenol
		3130-29-8	Potassium 4-tert-butylphenate
		5787-50-8	Sodium 4-tert-butylphenate
Cellosolve esters	3036	111-76-2	2- Butoxyethanol
		109-86-4	2- Methoxyethanol
Chloramine B	3037	127-52-6	N- Chlorobenzenesulfonamide, sodium salt
Chlorhexidine derivs.	3038	56-95-1	1,1'- Hexamethylene bis(5-(p-chlorophenyl)biguanide), diacetate
		18472-51-0	1,1'- Hexamethylene bis(5-(p-chlorophenyl)biguanide), digluconate
		3697-42-5	1,1'- Hexamethylene bis(5-(p-chlorophenyl)biguanide), dihydrochloride
Chlorinated glycoluril	3039	776-19-2	1,3,4,6- Tetrachloroglycoluril
Chlorocyclopentylphenol, and salts	3040	13347-42-7	4- Chloro-2-cyclopentylphenol
		35471-38-6	Potassium 4-chloro-2-cyclopentylphenate
		53404-20-9	Sodium 4-chloro-2-cyclopentylphenate
Chloro(hydroxymethyl acetamide	3041	2832-19-1	2- Chloro-N-(hydroxymethyl)acetamide
2-Chloro-4-phenylphenol, and salts	3042	92-04-6	2- Chloro-4-phenylphenol
		18128-16-0	Potassium 2-chloro-4-phenylphenate
		31366-97-9	Sodium 2-chloro-4-phenylphenate
4-Chloro-2-phenylphenol, and salts	3043	607-12-5	4- Chloro-2-phenylphenol
		53404-21-0	Potassium 4-chloro-2-phenylphenate
		10605-10-4	Sodium 4-chloro-2-phenylphenate
		53537-63-6	Dienthanolamine 4-chloro-2-phenylphenate
6-Chloro-2-phenylphenol, and salts	3044	85-97-2	6- Chloro-2-phenylphenol
		18128-17-1	Potassium 6-chloro-2-phenylphenate
		10605-11-5	Sodium 6-chloro-2-phenylphenate
		53537-63-6	Diethanolamine 4(or 6)-chloro-2-phenylphenate
p-Chloro-m-xylenol	3045	88-04-0	4- Chloro-3,5-xylenol
p-Chloro-m-cresol	3046	59-50-7	4- Chloro-3-cresol
Chlorosalicylanilide	3047	4638-48-6	5- Chlorosalicylanilide
Cinnamaldehyde	3048	104-55-2	Cinnamaldehyde
Cinoxate	3049	104-28-9	2- Ethoxyethyl p-methoxycinnamate
Coal tar chemicals: uses other than wood preserving.	3050	8001-58-9	Coal tar creosote
		65996-82-9	Coal tar neutral oils
		1319-77-3	Coal tar phenols
		68555-24-8	Tar acids, cresylic residues
(Coco alkyl)amine salts	3051		(Coco alkyl)amine hydrochloride
		68526-65-8	(Coco alkyl)amine monobenzoate
Cosan 145 (*)	3052		Methanol, [[[(2-dihydro-5-methyl-3(2H)-oxazolyl) -1-methylethoxy]methoxy]methoxy]-
Cyclohexanone	3053	108-94-1	Cyclohexanone
Cycloprate	3054	54460-46-7	Hexadecyl cyclopropanecarboxylate

Dihalodialkylhydantoins	3055		1,3- Dichloro-5-ethyl-5-methylhydantoin
		16079-88-2	1- Bromo-3-chloro-5,5-dimethyl-2,4-imidazolidinedione
		126-06-7	3- Bromo-1-chloro-5,5-dimethyl-2,4-imidazolidinedione
		77-48-5	1,3- Dibromo-5,5-dimethylhydantion
		118-52-5	1,3- Dichloro-5,5-dimethylhydantoin
DBPNA	3056	10222-01-2	2,2- Dibromo-3-nitrilopropionamide
o-Dichlorobenzene	3057	95-50-1	1,2- Dichlorobenzene
p-Dichlorobenzene	3058	106-46-7	1,4- Dichlorobenzene
Dichlorophene, and salts	3059	97-23-4	2,2'- Methylenebis(4-chlorophenol)
		10254-48-5	Sodium 2,2'-methylenebis(4-chlorophenate)
Dienochlor	3060	2227-17-0	Decachlorobis(2,4-cyclopentadiene-1-yl)
Dikegulac sodium	3061	52508-35-7	Sodium 2,3:4,6-bis-O-(1-methylethylidine)-alpha-L-xylo-2-hexulofuranosonate
Dimethametryn	3062	22936-75-0	N-(1,2- Dimethylpropyl)-N-ethyl-6-(methylthio)-1,3,5-triazine-2,4-diamine
Dimethepin	3063	55290-64-7	2,3- Dihydro-5,6-dimethyl-1,4-dithiin-1,1,4,5-tetraoxide
Dimethoxane	3064	828-00-2	2,6- Dimethyl-m-dioxan-4-ol acetate
Cyanodithioimidocarbonate	3065	138-93-2	Disodium cyanodithioimidocarbonate
DMPA	3066	299-85-4	O-(2,4- Dichlorophenyl) O-methyl isopropylphosphoramidothioate
Diphenylstibine octanoate	3067	5035-58-5	Diphenylstibene 2-ethylhexanoate
Dowicil S-13 (*)	3068	13108-52-6	2,3,5,6- Tetrachloro-4-(methylsulfonyl)pyridine
Dowicil 100 (*)	3069	4080-31-3	1-(3- Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride
Ethanolamine, 2-hydroxymethyl derivs.	3070	34375-28-5	2-((Hydroxymethyl)amino)ethanol
		52299-20-4	2-((Hydroxymethyl)amino)-2-methyl-1-propanol
Ethylene	3071	74-85-1	Ethylene
Fenuron trichloroacetate	3072	4482-55-7	3- Phenyl-1,1-dimethylurea trichloroacetate
Fluoroacetic acid derivs.	3073	640-19-7	2- Fluoroacetamide
		62-74-8	Sodium fluoroacetate
Grotan (*)	3074	4719-04-4	Hexahydro-1,3,5-tris(2-hydroxyethyl)-s-triazine
Hexylene glycol	3075	107-41-5	2- Methyl-2,4-pentanediol
Hydroxymethyl methyldithiocarbamate	3076	51026-28-9	Potassium N-hydroxymethyl-N-methyldithiocarbamate
Hylon (*)	3077	57063-29-3	4,5- Dichloro-2-cyclohexyl-4-isothiazolin-3-one
Imazapyr	3078	81334-34-1	2-(4- Isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl) nicotinic acid
Indalone	3079	532-34-3	Butyl 3,4-dihydro-2,2-dimethyl-4-oxo-2H-pyran-6-carboxylate

Iodine, KI, and iodine complexes	3080	7553-56-2		Iodine
		7681-11-0		Potassium iodide
		68610-00-4		Butoxypolypropoxypolyethoxyethanol - iodine complex
		26617-87-8		Polyethoxypolypropoxyethanol - iodine complex
				Polyethoxypolypropoxypolyethoxyethanol - iodine complex
		35860-86-7		Nonylphenoxypolyethoxyethanol - iodine complex
		53404-04-9	p-	Octylphenoxypolyethoxyethanol - iodine complex
		53467-01-9		Sodium dodecylbenzenesulfonate - iodine complex
		25655-41-8		Polyvinylpyrrolidone - iodine complex
		53404-81-2		Sodium N-cyclohexyl-N-palmitoyltaurate - iodine complex
			alpha-	Alkyl-omega-hydroxypoly(oxyethylene) - iodine complex
				Alkyl-poly(oxypropylene)poly(oxyethylene)-iodine complex
		7097-60-1		Tetraglycine hydroperiodide
Isobornyl acetate	3081			Isobornyl acetate
Lamprecide (*)	3082	88-30-2	a,a,a-	Trifluoro-4-nitro-m-cresol
Limonene	3083	138-86-3		Limonene
Lithium hypochlorite	3084	13840-33-0		Lithium hypochlorite
Mercury chlorides	3085	7487-94-7		Mercuric chloride
		10112-91-1		Mercurous chloride
Inorganic cyanide	3086	592-01-8		Calcium cyanide
		143-33-9		Sodium cyanide
		151-50-8		Potassium cyanide
Metasol J-26 (*)	3087	53404-62-9		Potassium N-(alpha-(nitroethyl)benzyl)ethylenediamine
Methylated naphthalenes	3088	1321-94-4		Methylated naphthalenes
Methyl chloroform	3089	71-55-6	1,1,1-	Trichloroethane
Methylene chloride	3090	75-09-2		Methylene chloride
Methyl ethyl ketone	3091	78-93-3	2-	Butanone
Methylisothiazolinone and derivs.	3092	2682-20-4	2-	Methyl-4-isothiazolin-3-one
		57373-20-3	2-	Methyl-4-isothiazolin-3-one calcium chloride
		26172-55-4	5-	Chloro-2-methyl-4-isothiazolin-3-one
		57373-19-0	5-	Chloro-2-methyl-4-isothiazolin-3-one calcium(II) chloride
(Methylnaphthyl)maleimide	3093	70017-56-0	N-(2-	Methyl-1-naphthyl)maleimide
Methyl nonyl ketone	3094	112-12-9	2-	Undecanone
Methyloxazolidines	3095	51200-87-4	4,4-	Dimethyloxazolidine
		75673-43-7	3,4,4-	Trimethyloxazolidine
Metronidazole	3096	443-48-1	2-	Methyl-5-nitroimidazole-1-ethanol
Mitin FF (*)	3097	3567-25-7		Sodium 5-chloro-2-(4-chloro-2-(3-(3,4-dichloro phenyl)ureido)phenoxy)benzenesulfonate
MON-4620 (*)	3098	40164-67-8	N-[(	Acetylamino)methyl]-2-chloro-N-(2,6-diethyl phenyl)acetamide
Naphthenate salts	3099	1338-02-9		Copper naphthenate
		12001-85-3		Zinc naphthenate
beta-Naphthol	3100	135-19-3	2-	Naphthalenol
Neomycin sulfate	3101	1405-10-3		Neomycin sulfate
NEPD (*)	3102	597-09-1	2-	Nitro-2-ethyl-1,3-propanediol

2-(Octylthio)ethanol	3103	3547-33-9	2- Hydroxyethyl octyl sulfide
Oil of camphor, and camphor	3104	8008-51-3 76-22-2	Camphor oil Camphor
Oil of citronella	3105	8000-29-1	Oil of citronella
Oil of pennyroyal	3106	8007-44-1	Oil of pennyroyal Leaves of Pennyroyal
Oleyl polyamine	3107	67905-86-6	N- Polythylenepolyamine-N-oleylamine hydrochloride
Paraclox	3108	34911-46-1	Parahydroxy-2-oxo-phenylacethydroxymic acid chloride
Perchloroethylene	3109	127-18-4	Tetrachloroethylene
Phenethyl propionate	3110	122-70-3	2- Phenylethyl propionate
Phosphorus	3111	7723-14-0	Phosphorus
Phthalate esters	3112	131-11-3 84-62-8 84-74-2 84-66-2 117-84-0 117-81-7	Dimethyl phthalate Diphenyl phthalate Dibutyl phthalate Diethyl phthalate Di-n-octyl phthalate Di-2-ethylhexyl phthalate
Pine oils	3113	8002-09-3 8011-48-1 8002-09-3	Pine oil Pine tar Pine tar oil
Piperalin	3114	3478-94-2	3-(2- Methylpiperidino)propyl 3,4-dichlorobenzoate
Piprotal	3115	5281-13-0	Piperonal bis(2-(2-butoxyethoxy)ethyl)acetal
Polybromide quat resin	3116		Polybromide form of trimethylbenzyl ammonium resin
Polyethoxylated abietylamine	3117	51344-62-8	Dehydroabietylamine - ethylene oxide condensate
Polyethoxyated alkylphenols	3118	30776-59-1 9016-45-9	Isooctylphenoxypolyethoxyethanol Nonylphenoxypolyethoxyethanol
Polyethoxylated aliphatic alcohols	3119	68131-40-8 52292-17-8	alpha- Alkyl-omega-hydroxypoly(oxyethylene) Polyethoxylated isooctadecanol
Polyexthoxylated aliphatic amines	3120	26635-92-7 26635-93-8 61791-14-8	N- Polyoxyethylated-N-octadecylamine N- Polyoxyethylated-N-oleylamine hydrochloride N-(Coco alkyl)-N,N-bis(2-omega-hydroxy poly(oxyethylene)ethyl)amine
Polyethoxylated sorbitol, derivs.	3121	 53466-71-0 9005-64-5 9005-65-6	Polyoxyethylene sorbitol, mixed ether ester of Polyoxyethylene sorbitol oleate-laurate Polyoxyethylene sorbitan monolaurate Polyoxyethylene sorbitan monooleate
Poly(hexamethylene biguanide) HCl	3122	32289-58-0	Poly(iminoimidocarbonyliminoimidocarbonylimino hexamethylene) hydrochloride
Polypropylene glycol, and ether derivs.	3123	25322-69-4 9003-13-8	Polypropylene glycol Polyoxypropylene monobutyl ether
Propamocarb	3124	24579-73-5	Propyl (3-(dimethylamino)propyl)carbamate
Propiconazole	3125	60207-90-1	1-((2-(2,4- Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl)methyl) -1H-1,2,4-triazole
Propylene glycol, and dipropylene glycol	3126	57-55-6 25265-71-8	1,2- Propanediol Dipropylene glycol
Repellant R-11 (*)	3127	126-15-8	2,3,4,5- Bis(2-butylene)tetrahydro-2-furaldehyde
Sabadilla alkaloids	3128	8051-02-3	Sabadilla alkaloids

Scilliroside	3129	507-60-8		Scilliroside
Siduron	3130	1982-49-6	1-(2-	Methylcyclohexyl)-3-phenylurea
Sodium dodecyl diphenyl oxide sulfonate	3131	53467-00-8		Sodium dodecyl diphenyl oxide sulfonate
Sodium fluoride	3132	7681-49-4		Sodium fluoride
Strychnine	3133	57-24-9		Strychnine
		60-41-3		Strychnine sulfate
Sulfacetamide	3134	144-80-9	N-((4-	Aminophenyl)sulfonyl)acetamide
Sulfaquinoxaline	3135	59-40-5	N1-(2-	Quinoxalinyl)sulfanilamide
Sulfometuron methyl	3136	74222-97-2		Methyl 2-[[[[(4,6-dimethyl-2-pyrimidinyl)amino] carbonyl]amino]sulfonyl]benzoate
Sulfoxide	3137	120-62-7	1,2-	Methylenedioxy-4-(2-(octylsulfinyl)propyl)benzene
Tanol derivs.	3138	104-61-0		Dihydro-5-pentyl-2(3H)-furanone
		104-67-6		Dihydro-5-heptyl-2(3H)-furanone
Terpineols, and turpentine	3139	138-87-4		Terpineols
		8006-64-2		Turpentine
Tetracaine hydrochloride	3140	136-47-0		Tetracaine hydrochloride
Thanite (*)	3141	115-31-1		Isobornyl thiocyanoacetate
Thiocyanoethyl derivs.	3142	112-56-1	beta-	Butoxy-beta'-thiocyano diethyl ether
		4617-17-8	beta,beta'-	Dithiocyano diethyl ether
			beta-	Thiocyanoethyl esters of mixed fatty acids
Thymol	3143	89-83-8	5-	Methyl-2-isopropyl-1-phenol
Trichloromelamine	3144	7673-09-8		Trichloromelamine
Triethanolamine, and fatty acid salts	3145	102-71-6		Tris(2-hydroxyethyl)amine
		2717-15-9		Triethanolamine oleate
		2224-49-9		Triethanolamine laurate
		41669-40-3		Triethanolamine myristate
Triethylene glycol	3146	112-27-6		Triethylene glycol
Triethylhexahydrotriazine	3147	7779-27-3	1,3,5-	Triethylhexahydro-s-triazine
Trimethoxysilyl quats	3148	27668-52-6	3-(	Trimethoxysilyl)propyl dimethyl octadecyl ammonium chloride
		68959-20-6	N,N-	Didecyl-N-methyl-3-(trimethoxysilyl) propanaminium chloride
Tris(hydroxymethyl) nitromethane	3149	126-11-4	2-(	Hydroxymethyl)-2-nitro-1,3-propanediol
Wood oils and gums	3150	8000-27-9		Cedarwood oil
				Ester gum
		8007-47-4		Canadian balsam

* Trademark

BILLING CODE 6560-50-C

IV. Significance of Inclusion on List C

Active ingredient cases included on List C are subject to FIFRA sec. 4(d), 4(e), 4(f) and 4(g) (Phases II, III, IV, and V) of the accelerated reregistration schemes.

The publication of List C is required by FIFRA sec. 4(c). Publication itself does not affect the registration status of any currently registered pesticide product. However, the Act establishes the publication date of List C as the determinant of the dates for completion of certain activities in Phases II, III, and IV, including:

A. A 90-day response period for Phase II, during which each registrant of a product containing an active ingredient on List C must respond to the Agency in accordance with FIFRA sec. 4(d). Registrants will be sent by certified mail specific instructions and guidance on how to respond.

B. A 1-year submission period for Phase III, commencing on the date of publication of List C in the **Federal Register**, during which registrants who have indicated in Phase II that they are relying on adequate data previously submitted to the Agency are required to summarize and reformat those data in accordance with guidance from the Agency.

C. A 24-month period for Phase IV, during which the Agency must evaluate Phase II and III submissions, independently determine remaining data requirements for each active ingredient, publish in the **Federal Register** a notice of outstanding data requirements, and notify registrants under FIFRA sec. 3(c)(2)(B) of any additional requirements.

In addition, fees are to be collected for each List C active ingredient in accordance with FIFRA sec. 4(i)(2). The Agency has determined that, for the purpose of registration fees, the term "active ingredient" refers to the chemical (or group of chemicals) associated with a single active ingredient case. In List C, individual active ingredient cases which are deemed to be "active ingredients" for fee purposes are listed in the first column.

Fees for active ingredients are to be allocated among registrants according to market share over the 1986–88 period, in accordance with FIFRA sec. 4(i)(7). On April 19, 1989, the Agency requested the submission of market share information from registrants; this information will form the basis for allocation of reregistration fees. Reregistration fees must be paid in part at the time of the 90-day Phase II response.

V. Paperwork Reduction Act

The Agency will be sending instructions to registrants having pesticide products containing active ingredients on List C, explaining how they must respond during Phase II.

The information collection requirements contained in those instructions (and triggered by this notice) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0102.

Public reporting burden for this collection of information is estimated to vary from 10 to 42 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0102), Washington, DC 20503.

Dated: July 14, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

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federal register

Monday
July 24, 1989

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Proposed Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Proposed Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This document proposes special migratory bird hunting regulations on Federal Indian reservations and ceded lands for the 1989–90 hunting season. This season will commence on September 1, 1989.

The Fish and Wildlife Service (hereinafter the Service) annually prescribes migratory bird hunting regulations frameworks to the States. This rule proposes migratory bird hunting regulations to be established for certain tribes on Federal Indian reservations and ceded lands in the 1989–90 hunting season.

DATE: The comment period for these proposed regulations will end August 8, 1989.

ADDRESS: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634, Arlington Square, Washington, DC 20240. Comments received on these proposed hunting regulations and tribal proposals will be available for public inspection during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA. The Service's biological opinions resulting from its consultation under section 7 of the Endangered Species Act are available for public inspection in or are available from the Division of Endangered Species and Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Fant W. Martin, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634, Arlington Square, Washington, DC 20240 (703–358–1714).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.) authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the February 27, 1989 **Federal Register** (54 FR 822), the Service requested proposals from Indian tribes that wished to establish special migratory bird hunting regulations for the 1989–90 hunting season, under the guidelines described in the June 4, 1985 **Federal Register** (at 50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines are capable of application to those tribes that have recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subjects to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands.

One of the guidelines provides for the continuation of harvest of waterfowl and other migratory game birds by tribal members on reservations where it is a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season required by the 1916 Canadian Migratory Bird Treaty, and it is not so large as to adversely affect the status of the migratory bird resource. Prior to the 1987–88 and 1988–89 hunting seasons, the Service reached an agreement with the Mille Lacs Band of Chippewa Indians for hunting by tribal members on their land in Minnesota. A similar agreement was reached with the Yankton Sioux Tribe in South Dakota for the 1988–89 hunting season. The Service recently reached agreement again with the Mille Lacs Band for the 1989–90 hunting season.

Before developing the guidelines, the Service reviewed available information on the current status of migratory bird hunting on Federal Indian reservations and evaluated the impact that adoption of the guidelines likely would have on migratory birds. The Service has concluded that the size of the migratory bird harvest by tribal members hunting on their reservation is too small to have significant impacts on the migratory bird resource when compared with the much larger off-reservation sport harvest by non-Indians. The major area of concern relates to hunting seasons for nontribal members on dates that are within Federal frameworks, but that are different from those established by the State(s) in which a Federal Indian reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse harvest impacts on one or more migratory bird species. The guidelines make such an event unlikely, however, because tribal proposals must include details on the harvest anticipated under the requested regulations; methods that will be employed to measure or monitor harvest (bag checks, mail questionnaires, etc.); steps that will be taken to limit level of harvest, where it could be shown that failure to limit such

harvest would impact seriously on the migratory bird resource; and tribal capabilities to establish and enforce migratory bird hunting regulations. Based on a review of tribal proposals, the Service may require modifications, and regulations may be established experimentally, pending evaluation and confirmation of harvest information obtained by the tribes.

The Service believes that the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. Nevertheless, the Service notes that they have been employed successfully since 1985 to establish special hunting regulations for Indian tribes. Therefore, the Service believes they have been tested adequately and made them final beginning with the 1988–89 hunting season. It should be stressed here, however, that use of the guidelines is not necessary and no action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

The Service notes that duck numbers were much smaller than usual last year, largely because of poor reproduction caused by an extended period of drought in the Prairie Pothole Region of Canada and the United States. The drought in 1988 was especially severe, and for conservation purposes, duck hunting regulations were restrictive during the 1988–89 hunting season. Preliminary results of of recent breeding population surveys indicate little overall improvement in breeding ground conditions and duck population status, and restrictive hunting regulations can be expected again for the 1989–90 season.

Hunting Season Proposals From Indian Tribes and Organizations

In addition to the Mille Lacs Band, the Service received requests from ten tribes and Indian organizations for special migratory bird hunting regulations for the 1989–90 hunting season.

The proposed regulations for the different tribes are shown below. It should be noted that this proposed rule, and a final rule to be published later in an August 1989 **Federal Register**, will include tribal regulations for both early and late hunting seasons. The early season begins on September 1 each year and includes species such as mourning doves and white-winged doves. The late season usually begins on or around October 1 and includes most waterfowl species. Because final regulations for Indian tribes must be established by September 1, the proposed and final regulations for most tribal hunting seasons are described in relation to the season dates, season length, and limits that will be permitted when final Federal frameworks are announced for early and late season regulations. For example, the daily bag and possession limits for ducks on reservations in the Southwestern United States will be shown as "Same as permitted Pacific Flyway States under final Federal frameworks to be announced," and limits for geese will be shown as the same that will be permitted the State(s) in which the reservations are located. The proposed frameworks for early season regulations are scheduled for early July publication in the **Federal Register**, and final Federal frameworks will be published in early August. Proposed late season frameworks for waterfowl and coots will be published in mid-August, and the final Federal frameworks for the late season will be published in a mid-September **Federal Register**. The Service will notify affected tribes of season dates, bag limits, etc., as soon as final frameworks are established. As discussed earlier in this document, no action is required by tribes that wish to observe the migratory bird hunting regulations established by the State in which a reservation is located.

1. Penobscot Indian Nation, Old Town, Maine

Since June 1985, the Service has approved a general migratory bird hunting season for both Penobscot tribal members and nonmembers, under regulations adopted by the State, and a sustenance season that applied only to tribal members. At the Service's request, the tribe has monitored black duck and other waterfowl harvest during each sustenance season and has confirmed that it is negligible in size.

In an April 26, 1989 proposal, the tribe again requested special regulations for tribal members in Penobscot Indian Territory, an area of trust lands that includes but is much larger than the reservation. These additional lands were acquired by the tribe as a result of the 1980 Maine Indian Claims Settlement. The tribe proposed a 1989–90 sustenance hunting season of 76 days (September 16—November 30), with a daily bag limit of 4 ducks, including no more that 1 black duck and 2 wood ducks. The daily bag limit for geese would include 3 Canada geese, 3 snow geese, or 3 in the aggregate. When the sustenance and Maine's general waterfowl season overlap, the daily bag limit for tribal members will be only the larger of the two daily bag limits. All other Federal regulations will be observed by tribal members, except that shooting hours will be from one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on Penobscot Indian Territory will adhere to the waterfowl hunting regulations established by the State of Maine.

The Service notes that the regulations requested by the tribe are nearly identical to those established last year and proposes to approve the tribal request.

2. Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The tribe owns all lands on the reservation and has recognized full wildlife management authority.

In a May 6, 1989 proposal, the tribe requested the earliest opening date permitted Pacific Flyway States for ducks for the 1989–90 hunting season and a closing date of November 30, 1989. Daily bag and possession limits also would be the same as permitted Pacific Flyway States. The tribe requested that the season be closed for geese and other migratory game birds. The tribe conducts a harvest survey each year, and the duck harvest has been small.

The requested regulations are the same as were established last year, and the Service proposes to approve the tribe's requests for the 1988–89 hunting season.

3. Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. In the past, the tribe has observed the waterfowl hunting regulations established by the State of South Dakota. However, the tribe is developing a wildlife management program, and in a May 17, 1989 proposal, requested special duck hunting regulations for the 1989–90 hunting season. The regulations would apply to both tribal members and nonmembers hunting on tribal and trust lands within the external boundaries of the reservation. The tribe requested a continuous duck season, beginning on October 21, 1989, with the maximum number of days and the same daily bag

and possession limits permitted in the Low Plains portion of South Dakota, under final Federal frameworks to be announced. The requested hunting season dates will be within Federal frameworks, but the season would open and close later than has been the case in the past. The later season is likely to provide more duck hunting opportunity on the reservation, but the harvest is expected to be low because of the small number of hunters. The tribe requested the same goose hunting season dates and daily bag and possession limits as will be established by South Dakota in the Missouri River Zone.

The Service proposes to establish the requested duck hunting regulations on an experimental basis and asks that the tribe conduct a harvest survey to ensure that hunting activity and harvest are as low as anticipated.

4. Yankton Sioux Tribe, Yankton Indian Reservation, Marty, South Dakota

Last year, the Yankton Sioux Tribe and the Service reached agreement on special Canada goose hunting regulations for tribal members hunting on tribal and trust lands during the 1988–89 hunting season. On May 22, 1989, the tribe submitted a proposal requesting special Canada goose regulations for both tribal members and nonmembers hunting on tribal and trust lands during the 1989–90 hunting season. Details in the proposal were clarified in a June 22, 1989 telephone conversation. The tribe has requested a continuous Canada goose and White-fronted goose hunting season, beginning on October 21, 1989, with the maximum number of days permitted for South Dakota's Missouri River Zone, under final Federal frameworks to be announced. Daily bag and possession limits will be the same as permitted under Federal frameworks. Season dates and daily bag and possession limits for snow geese will be the same as established by South Dakota. The tribe wishes to adopt the duck hunting regulations that will be established by the State for the Low Plains region.

The tribe stated that the Canada goose and white-fronted goose season permitted by the regulations would begin and close two weeks later than during the usual season established by the State. The later tribal season is expected to provide more hunting opportunity, but the harvest is expected to be small because of the limited number of hunters. The Service proposes to approve the tribal proposal on an experimental basis for the 1989–90 hunting season, with a requirement that the tribe conduct a survey to measure the harvest of Canada and White-fronted geese by tribal members and nonmembers.

5. White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona

The White Mountain Apache Tribe owns all reservation lands, and the tribe has recognized full wildlife management authority. In a May 26, 1989 letter, the tribe requested a continuous waterfowl hunting season for 1989–90, with the latest closing date and longest season permitted under final Federal frameworks to be announced. The tribe requested the same daily bag and possession limits for ducks permitted Pacific Flyways States and the same bag and possession limits permitted Arizona for geese. Season dates and bag and possession limits for band-tailed pigeons and mourning doves will be the same as established by Arizona under final Federal frameworks. The regulations will apply both to tribal members and nonmembers.

The regulations requested by the tribe are the same as were approved last year, and the Service proposes to establish them again for the 1989–90 hunting season.

6. Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho

Almost all of the Fort Hall Indian Reservation is tribally-owned. The tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by nontribal members on reservation lands owned by non-Indians. As a compromise, since 1985, the Service has established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation state zone. The regulations were requested by the tribes and provided for different season dates than in the remainder of the State. The Service agreed to the season dates because it seemed likely that they would provide some additional protection to mallards and pintails, and the State concurred with the zoning arrangement. The Service has no objection to the State's use of this zone again in the 1989–90 hunting season, provided the duck and goose hunting season dates are the same as on the reservation. For the 1989–90 hunting season, the Shoshone-Bannock Tribes have requested a continuous duck season, beginning on October 14, 1989, with the maximum number of days and the same daily bag and possession limits permitted Pacific Flyway States, under final Federal frameworks to be announced. Coot and snipe season dates will be the same as for ducks, with the same daily bag and possession limits permitted Pacific Flyway States. The tribes requested a continuous goose season, beginning on October 14, 1989, with the maximum number of days and the same daily bag and possession limits permitted Idaho under Federal frameworks.

The Service notes that the requested regulations are nearly the same as those approved last year and proposes to approve the tribe's request for the 1989–90 hunting season.

7. Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona

The Colorado River Indian Reservation is located in Arizona and California. The tribes own almost all lands on the reservation, and they have full wildlife management authority. Beginning with the 1985 hunting season, the Service, as requested by the tribes, has established the same migratory bird hunting regulations on the reservation as in the Colorado River Zone in California.

In a June 2, 1989 proposal, the tribes requested the same regulations that were approved last year. As discussed earlier, the population status of ducks continues to be insecure. Consequently, while the regulations frameworks for ducks have not been announced, it is likely that restrictive regulations will be necessary for the 1989–90 hunting season. Therefore, the Service proposes to establish the same migratory bird hunting regulations on the reservation as will be established for California's Colorado River Zone. As in the past, the regulations will apply both to tribal members and nonmembers.

8. Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana

During the past two years, the Confederated Salish and Kootenai Tribes and the State of Montana entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. By mutual agreement, waterfowl hunting regulations on the reservation were the same as established for the Pacific Flyway portion of Montana and included provision for the customary early closure of the goose season on a portion of the reservation.

In a June 2, 1989 proposal, the tribes again requested that the Service approve special regulations for the 1989–90 waterfowl hunting season. As in the past, the regulations would be the same as for the Pacific Flyway portion of the

State and would provide for earlier closure of goose hunting. In a covering letter, John B. Carter, Tribal Attorney, pointed out that the Confederated Salish and Kootenai Tribes and the State of Montana are working toward a comprehensive and long-term agreement, but that it may not be completed before the hunting season.

The Service is pleased that the tribes and State are continuing to work toward a lasting agreement and urges that some form of accord be reached in time to include the 1989–90 migratory bird hunting regulations for the Flathead Indian Reservation bird hunting regulations for the Flathead Indian Reservation in the final rule scheduled for publication in mid-August.

9. Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona

Since 1985, the Service has established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The tribe owns almost all lands on the reservation and has full wildlife management authority.

In a June 2, 1989 letter, the tribe requested and the Service proposes to establish the following regulations on the reservation for both tribal and nontribal members for the 1989–90 hunting season:

A. *Ducks (including Mergansers).*

Season Dates: Earliest opening date and longest season permitted Pacific Flyway States under final Federal frameworks to be announced.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

B. *Canada Geese (season closed on other geese).*

Season Dates: December 16-January 7.

Daily Bag and Possession Limits: Daily limit 2. Possession limit 4.

C. *Coots and Common Moorhens (Gallinules).*

Season Dates: Same as for ducks.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

D. *Common Snipe.*

Season Dates: Same as for ducks.

Daily Bag and Possession Limits: Daily limit 8. Possession limit 16.

E. *Band-tailed Pigeons.*

Season Dates: September 1-September 30.

Daily Bag and Possession Limits: Daily limit 5. Possession limit 10.

F. *Mourning Doves and White-winged Doves.*

Season Dates: September 1–September 30.

Daily Bag and Possession Limits: 10 mourning and white-wing doves in the aggregate, of which no more than 6 may be white-winged doves. Possession limit after opening day is 20 mourning and white-winged doves in the aggregate, of which no more than 12 may be white-winged doves.

G. *General Conditions:* Tribal members and nonmembers will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

10. Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (which represents the various bands). Beginning in 1986, the Michigan Department of Natural Resources agreed to accommodate a tribal season on ceded lands in the western portion of the State's Upper Peninsula, and the Service approved special regulations for tribal members in both Michigan and Wisconsin during the 1986–87, 1987–88, and 1988–89 hunting seasons. In 1987, the Great Lakes Indian Fish and Wildlife Commission requested and the Service approved special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin concurred with the regulations, although Wisconsin has raised some concerns each year. Minnesota did not concur with the regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. The Service acknowledged the State's concern, but pointed out that the United States Government has recognized the Indian hunting rights decided in the *Voigt* case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the *Voigt* decision did not specifically address ceded land outside Wisconsin. The Service believes that this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. Consequently, in view of the above, and the fact that the tribal harvest was small, the Service approved special regulations for the 1987–88 and 1988–89 hunting seasons on ceded lands in all three States.

On June 5, 1989, the Great Lakes Indian Fish and Wildlife Commission again requested special migratory bird hunting regulations, and copies of the proposal were mailed to officials in the affected States of Michigan, Minnesota, and Wisconsin. The proposed regulations are shown below. The only substantive change from 1988 is a request for an earlier opening of the duck season in the treaty area in Minnesota and Wisconsin for the 1989–90 hunting season. In 1988, the opening date was delayed one week because of the need to provide some added protection to duck populations, whose numbers were much reduced because of drought. The Service believes that a final decision on the appropriate opening date of the duck season should be deferred until ongoing surveys of duck population status have been completed, a conclusion also reached by the Great Lakes Indian Fish and Wildlife Commission. As noted earlier in this document, preliminary survey results indicate that duck numbers remain at depressed levels, and it is likely that restrictive duck regulations will be necessary again in the 1989–90 season.

In a June 22, 1989 letter, the Michigan Department of Natural Resources concurred with the proposed regulations for hunting by Chippewa Tribal members in the western portion of the State's Upper Peninsula. However, the State requested consultation with the Great Lakes Indian Fish and Wildlife Commission in the event that any changes in regulations are requested. The Service has received no communications regarding the proposal from the States of Minnesota and Wisconsin and intends to consult with State officials and the Great Lakes Indian Fish and Wildlife Commission before publishing a final rule in August 1989.

A. *Ducks—Wisconsin and Minnesota Zones:*

Season Dates: Begin September 18. End with closure of Wisconsin Northern Zone duck season.

Daily Bag and Possession Limits: Same as permitted Wisconsin under final Federal frameworks to be announced.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan for the Western Upper Peninsula under final Federal frameworks to be announced.

B. *Canada Geese—Wisconsin and Minnesota Zones.*

Season Dates: Begin September 18. End with closure of Wisconsin Northern Zone duck season.

Daily Bag and Possession Limits: 3 daily. Possession limit 6.

Michigan Zone: Season Dates: Same dates and season length permitted Michigan for the Western Upper Peninsula under final Federal frameworks to be announced.

Daily Bag and Possession Limits: 3 daily. Possession limit 6.

C. *Other Geese (Blue, Snow, and White-fronted Geese)—Wisconsin and Minnesota Zones.*

Season Dates: Begin September 18. End with closure of Wisconsin Northern Zone duck season.

Daily Bag and Possession Limits: Same as permitted Wisconsin under final Federal frameworks to be announced.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan for the Western Upper Peninsula under final frameworks to be announced.

D. *Coots and Common Moorhens (Common Gallinule)—Wisconsin and Minnesota Zones.*

Season Dates: Begin September 18. End with closure of Wisconsin Northern Zone duck season.

Daily Bag and Possession Limits: 20 daily, singly or in the aggregate. Possession limit 40.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan under final Federal frameworks to be announced.

E. *Sora and Virginia Rails—Wisconsin and Minnesota Zones.*

Season Dates: Begin September 18. End with closure of Wisconsin Northern Zone duck season.

Daily Bag and Possession Limits: 25 daily, singly or in the aggregate. Possession limit 25.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan for the Western Upper Peninsula under final Federal frameworks to be announced.

F. *Common Snipe—Wisconsin and Minnesota Zones.*

Season Dates: Begin September 18. End with closure of Wisconsin Northern Zone duck season.

Daily Bag and Possession Limits: 8 daily. Possession limit 16.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan for the Western Upper Peninsula under final Federal frameworks to be announced.

G. *Woodcock—Wisconsin and Minnesota Zone.*

Season Dates: September 16-November 20.

Daily Bag and Possession Limits: 5 daily. Possession limit 10.

Michigan Zone: Same dates, season length, and daily bag and possession limits permitted Michigan for the Western Upper Peninsula under final Federal frameworks to be announced.

H. *General Conditions*

1. While hunting waterfowl a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Tribal members will comply with all basic Federal migratory bird hunting regulations, 50 CFR Part 20, and shooting hour regulations, 50 CFR Part 20, Subpart K.

3. Nontoxic shot will be required for all off-reservation hunting by tribal members of waterfowl, coots, moorhens, and gallinules.

4. Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

5. *Wisconsin Zone*

Tribal members will comply with NR 10.09 (1)(a) (2) and (3), Wis. Adm. Code (shotshells), sec. NR 10.12 (1)(C), Wis. Adm. Code (shooting from structures), sec. NR 10.12 (1)(g), Wis. Adm. Code (decoys), and sec. 29.27 Wis. Stats. (duck blinds). The Canada goose season at Powell Marsh will begin on September 18. A tribal quota of 25 Canada geese will be in effect until September 25, or until daily censuses by Great Lakes Indian Fish and Wildlife Commission or Wisconsin Department of Natural Resources employees indicate that at least 300 Canada geese are in the area, whichever comes first. If the tribal quota is reached before September 25 and before 300 Canada geese are present, Powell Marsh will be closed to tribal hunting until September 25. Thereafter, the tribal season will resume without a quota and with a daily bag limit of 3 Canada geese.

6. *Minnesota Zone.* Tribal members will comply with M.S. 100.29, Subd. 18 (duck blinds and decoys).

7. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with sec. NR 19.12, Wis. Adm. Code. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

Public Comment Invited

Based on the results of recently completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations beginning as early as September 1, 1989 on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations for tribal or for both tribal members and nontribal members may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, gallinules (including moorhen), woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks (including mergansers), and geese.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. Therefore, he desires to obtain the comments and suggestions on these proposals from the public, other concerned governmental agencies, tribal and other Indian organizations, and private interests, and he will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances in the establishment of these regulations limit the amount of time that the Service can allow for public comments. Two considerations compress the time in which this rulemaking process must operate: the need, on the one hand, for tribes and the Service to establish final regulations before September 1, 1989, and on the other hand, the unavailability before late July of specific reliable data on this year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 8, 1989 is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634, Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's Office of Migratory Bird Management in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA 22203. All relevant comments on the proposals received no later than August 8, 1989 will be considered.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)", was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582) and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Nontoxic Shot Regulations

On November 9, 1988 (at 53 FR 45296), the Service proposed nontoxic shot zones for the 1989–90 waterfowl hunting season. This proposed rule was sent to all affected tribes and to Indian organizations for comment. The final rule on nontoxic shot zones for the 1988–89 hunting season was published on April 13, 1989 in the **Federal Register** (54 FR 14814). All of the proposed hunting regulations covered by this proposed rule are in compliance with the Service's nontoxic shot restrictions.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Consequently, the Service has initiated section 7 consultation under the Endangered Species Act for the proposed hunting seasons on Federal Indian reservations and ceded lands.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the **Federal Register** dated March 27, 1989 (54 FR 12534), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634, Arlington Square, Washington, DC 20240. As noted in the **Federal Register**, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. This rule does not contain any information collection requiring approval by OMB under 44 U.S.C. 3504.

Authorship

The primary author of this proposed rulemaking is Fant W. Martin, Office of Migratory Bird Management, working under the direction of Byron K. Williams, Acting Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1988–89 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended.

Date: July 18, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–17273 Filed 7–21–89; 8:45 am]

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federal register

Monday
July 24, 1989

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43; 65, Subpart E; and 145
Repair Station and Repairmen Certification Rules; Regulatory Review; Notice of Public Meetings

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43; 65, Subpart E; and 145

[Docket No. 25965]

RIN 2120-AC38

Repair Station and Repairmen Certification Rules; Regulatory Review; Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces four public meetings in which the Federal Aviation Administration (FAA) will solicit information from the public concerning revision of the repair station rules, repairmen certification rules, and sections of the maintenance, preventive maintenance, rebuilding, and alteration rules as applicable to repair stations. A complete explanation of the topics to be considered appears in this notice under Topics for Discussion. Topics not listed will be considered if there is sufficient interest and time permits. The FAA will use information and views learned at these meetings to review the existing regulations and to explore alternatives in revising the rules of these parts.

DATES: The public meetings will be held on October 24 and 25, 1989, in Washington, DC; on November 7 and 8, 1989, in Fort Lauderdale, Florida; on November 28 and 29, 1989, in Dallas, Texas; and on December 12 and 13, 1989, in San Francisco, California.

ADDRESSES: The public meetings will be held at the following locations:

(1) October 24 and 25, 1989, from 9:00 a.m. to 4:00 p.m. at the Federal Aviation Administration Building, Third Floor Auditorium, 800 Independence Avenue, SW., Washington, DC 20591. Registration will begin at 8:00 a.m. each day of the meeting.

(2) November 7 and 8, 1989, in Fort Lauderdale, Florida, from 9:00 a.m. until 4:00 p.m. at Fort Lauderdale Airport Hilton, 1870 Griffin Road, Dania, Florida 33004. Registration will begin at 8:00 a.m. each day at the meeting.

(3) November 28 and 29, 1989, in Dallas, Texas, from 9:00 a.m. to 4:00 p.m. at Holiday Inn D/FW Airport North, 4441 Highway 114 & Esters Boulevard, Irving, Texas 75063. Registration will begin at 8:00 a.m. each day of the meeting.

(4) December 12 and 13, 1989, in San Francisco, California, from 9:00 a.m. to 4:00 p.m. at Amfac Hotel, San Francisco International Airport, 1380 Old Bayshore Highway, Burlingame, California, 94010. Registration will begin at 8:00 a.m. each day of the meeting.

FOR FURTHER INFORMATION CONTACT: Requests to be heard at a meeting and questions concerning the logistics of the meetings should be directed to Barbara Crawford, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3780. For questions concerning the subject matter of the meetings, contact Leo Weston, Aircraft Maintenance Division (AFS-320), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8283.

SUPPLEMENTARY INFORMATION:

Participation at a Meeting

Persons wishing to present a statement at a meeting are requested to direct the request, and submit a copy of any written material to be presented orally during a meeting, to the person listed in the section entitled **FOR FURTHER INFORMATION CONTACT.** A request to present a statement and a copy of written material to be presented orally during the first meeting must be received by the FAA on or before October 10, 1989. A request to present a statement and a copy of written material to be presented orally during the second meeting must be received by the FAA on or before October 24, 1989. A request to present a statement and a copy of written material to be presented orally during the third meeting must be received by the FAA on or before November 14, 1989. A request to present a statement and a copy of written material to be presented orally during the fourth meeting must be received by the FAA on or before November 28, 1989.

Each person requesting to present a statement and submitting written material should indicate which meeting he/she wishes to attend and should include an estimate of the time necessary for the oral presentation. Following receipt of the presentation material, the FAA will develop an agenda for each meeting that will be available at that meeting. In order to accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Requests for time to make a presentation received after the above dates will be honored on a time-available basis and may not appear on the written agenda.

Persons or organizations unable to attend the meetings may mail their comments in duplicate to the Office of the Chief Counsel, ATTN: Rules Docket (AGC-10), Docket No. , Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC 20591. Comments that are mailed or delivered must be marked "Docket No. " and must be received on or before January 31, 1990. Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m., Monday through Friday (excluding Federal holidays).

Background

Current repair station regulations are based on concepts developed during the infancy of the aviation industry, and review of these rules is considered necessary to determine present and future needs. Very few substantive changes have been made to those repair station rules since they were recodified in 1962 (27 FR 6662; July 13, 1962) and many of the rules may need to be updated to reflect the state-of-the-art. Both the FAA and the aviation industry have witnessed a change in the nature and method of aviation maintenance practices to keep pace with the state-of-the-art. To stay current with the state-of-the-art, it has been necessary at times to provide Special Federal Aviation Regulations (SFARs), airworthiness directives, exemptions, and other special administrative procedures to handle situations not adequately provided for in the regulations.

Although the FAA considered suggestions for conducting a complete review of Part 145 related to repair station ratings and privileges in the early 1960's, no formal action to amend Part 145 was taken until 1975.

Both the FAA and industry proposed specific amendments to Part 145 in response to the FAA First Biennial Operations Review in 1975. Although amendments to Part 145 were subsequently adopted, there was no major revision or change regarding ratings, privileges, and inspection procedures. In addition to the above, the FAA has held several meetings with various industry groups, repair stations, and aviation organizations in which opinions and suggestions for revision and update of FAR Part 145 have been offered.

Although the National Transportation Safety Board (NTSB) has not specifically recommended any changes to the repair station regulations, it has issued several general recommendations relating to repair stations. NTSB Recommendation

A–69–025 requested the FAA to issue a maintenance alert bulletin to remind U.S.-certificated repair stations of the adverse effects of overtorquing the delta hinge bolt on a Bell Model 476–2 helicopter. NTSB Recommendation A–70–029 requested the FAA to review repair station specifications of all facilities engaged in retreading aircraft tires and to update such specifications where necessary to meet the performance requirements for high-speed aircraft tires. NTSB Recommendation A–76–071 requested the FAA to review its programs for surveillance of U.S.-certificated repair stations and the procedures governing the issuance of supplemental type certificates. NTSB Recommendations A–76–078 and A–76–079 recommended that the FAA review its surveillance procedures for U.S.-certificated repair stations to ensure that these procedures are adequate and that all repair stations maintain and use complete and current maintenance manuals. NTSB Recommendation A–79–102 recommended that the FAA require air carrier maintenance facilities and other designated repair stations to make a hazard analysis evaluation of proposed maintenance procedures that deviate from those in the manufacturer's maintenance manual and that involve removal, installation, or work in the vicinity of structurally significant components, and submit proposed procedures to the appropriate representative of the FAA Administrator for approval. NTSB Recommendations A–81–148 and A–81–149 recommended that the FAA review the procedures of all repair stations to ensure that aircraft records are thoroughly reviewed and that the proper inspections are performed.

Topics for Discussion

The FAA requests the participation of all interested persons, and the identification of any data, literature, statistics, research papers, and/or documentation that may be available in the public sector to support any recommendations. This will assist the FAA's consideration of the issues herein and will provide background material for any regulatory change. The FAA will consider all comments received in response to this notice in any future rulemaking action regarding Parts 43; 65, Subpart E; and 145 resulting from this notice.

Participants in this public meeting are invited to express views and to make recommendations for regulatory changes. Participants should also address the economic consequences (e.g., implementation costs, potential savings) of the changes discussed. The FAA encourages those persons submitting comments to include sources of supporting data that may be applicable to their viewpoints and recommendations.

The FAA has already received suggestions and opinions on how to update the repair station regulations in Parts 43; 65, Subpart E; and 145. Information summarizing these views is presented below to elicit information and comment from, and to stimulate informed discussion among, interested persons and organizations.

Specific areas of Part 145 that may need revision are: format; ratings and classes; operations and inspection procedures; manufacturer's maintenance facilities; contracting by repair stations; repair station privileges; facilities, housing, and equipment requirements; recordkeeping and report requirements; and the qualifications of management, inspection personnel, and repairmen. Public comments are requested on each of these areas, particularly suggestions noted below that have been received by the FAA as to how any revision to Part 145 could be developed.

Areas for Discussion

1. Format

Several suggestions have been made that the format of Part 145 be revised to group related subjects for ease of reference and to eliminate duplication. All current sections should be reviewed to determine whether they should be amended, or deleted as necessary and placed in the appropriate section or subpart of the new format. Pertinent parts of the FAA Airworthiness Inspector's Handbook (FAA Order 8300.9) and current Advisory Circulars related to repair stations could be considered for possible inclusion in the FAR as appropriate.

The present subparts in Part 145 could be realigned as follows: Subpart A—General; Subpart B—Certification; Subpart C—Facilities, Equipment, Materials, and Personnel Requirements; and Subpart D—Operating Rules. The regulations relating to specific subparts could be grouped under those subparts. Comments are requested as to whether such a realignment would facilitate the use and understanding of the regulation. Commenters and attendees should address the advantages and/or disadvantages of so consolidating regulations and comment on any costs that may be associated with a renumbering and the organization of pertinent regulatory sections.

2. Ratings and Classes

Repair stations with designated class ratings that are keyed to size and construction of aircraft and type of powerplant might provide a more simplified rating system than the current system in §§ 145.31 and 145.33. A new system of ratings could encompass modern maintenance requirements to permit optimum versatility and not impose operating restrictions beyond those required in the interest of safety. The rules should be reviewed and amended to reduce the number of certification actions and the need for exemptions as is presently the case. New ratings and classes may require, in some cases, recertification or exchange of current certificates. A possible "rating" and "class" system is described below:

Aircraft rating: Under current regulations, a repair station with an airframe rating may inspect powerplants, but is not permitted, even if equipped, to perform routine minor maintenance on powerplants or propellers. The FAA would consider changing the current "Airframe rating" to an "Aircraft rating." This would permit a repair station with an "Aircraft rating" to perform minor repair and minor alterations on engines and propellers up to, but not including, an "overhaul" as that term is described in § 43.2 of the FAR.

The current classes as now described in § 145.31 for an airframe rating could be deleted and the classes of aircraft on which a repair station could perform work under the new aircraft rating could be designated as follows:

—Class 1—aircraft (other than rotorcraft) with a maximum certificated takeoff weight of 12,500 lbs or less
—Class 3—aircraft (other than rotorcraft) with a maximum certificated takeoff weight over 12,500 lbs and up to and including 75,000 lbs
—Class 2—aircraft (other than rotorcraft) with a maximum certificated takeoff weight over 75,000 lbs.

Class 1 and 2 designations, along with the specific rating granted to a repair station, could apply to all types of aircraft in that class, regardless of make and model, provided the necessary facilities, housing, and equipment as required by other sections are in place. Class 3 designation could be granted only for a specific make and model of aircraft. Separate class ratings could also be issued for composite aircraft and rotorcraft (new Classes 4 and 5). A separate class rating could be issued to

a repair station for maintenance of rotorcraft. Aircraft primarily constructed of advanced composite material could be recognized as a separate class.

Powerplant rating: The current three classes of powerplant ratings could be expanded to provide for a general demarcation between types of turbine engines, as is currently done for reciprocating engines. Although the categorization of turboprop and turbojet engines cannot in all cases be based on the size of the engine, the FAA considers that such a demarcation of classes for turbine engines may be reasonable, however, specific comments are requested on having separate classes for these engines. In addition, a separate class of powerplant rating for new propfan engines using ultrahigh bypass ratios has been suggested. Does this suggestion have merit? What should the requirements be for such a rating and class, particularly in regard to facility and equipment requirements?

Propeller rating. It may be appropriate to add an additional class to the propeller rating for composite propellers composed primarily of advanced composite material. Does this suggestion have merit? If so, what additional requirements should be set forth for such a rating and class?

Avionics rating: It has been suggested that the current "Radio rating" be changed to an "Avionics rating" with the current classes generally being retained. The Class 1 communication equipment could be retained as well as the Class 2 navigational equipment. The Class 3 radar equipment could be changed to "pulse equipment" to cover any aircraft electronic system operated on pulse radio frequency principles. This would require some changes in the type of equipment being worked on under Class 2 navigational equipment and Class 3 for pulse equipment. Under this approach, Class 2 navigational equipment would specifically cover VOR, ADF, localizer, glide slope, marker beacons, LORAN C, OMEGA, MLS, and similar devices, whereas the Class 3 pulse equipment rating would specifically cover DME, transponder, airborne radar, radar altimeter, ground proximity indicator, and similar devices. Is this a viable approach? If so, what should be requirements be for each class?

Computer systems rating: A new rating for advanced computer systems could be established for digital computer systems, and components thereof, with the function of receiving external data, processing such data, and transmitting and presenting the processed data. Three classes for this rating could be established: Class 1—aircraft computer systems such as flight management and flight control systems; Class 2—powerplant computer systems such as fuel control and electronic engine control systems; and Class 3—avionics computer systems such as traffic collision avoidance systems, windshear avoidance systems, electronic flight instrument systems, and on-board maintenance systems. Would the addition of this rating be appropriate? What requirements should be considered?

Instrument rating: The instrument rating and classes could remain essentially the same as in the current rules but the new computer rating would be provided to cover modern technology.

Accessory rating: The accessory rating and classes could remain essentially unchanged.

Limited ratings: Although limited ratings could be retained, it has been suggested that the current rule could be changed to apply only to a particular make and model under a given rating. What are the advantages/disadvantages to such a change?

Specialized service rating: Consideration has been given to the addition of a new rating to cover a specific category of specialized equipment such as landing gear systems, nondestructive inspection and testing, and emergency equipment. A specialized service rating could be issued whenever the Administrator would find an applicant's request to be appropriate. Is such a new rating desirable? What should be the requirements for such a rating?

3. Operations and Inspection Procedures

Participants should consider whether the sections relating to operating rules and inspection systems should be updated and revised. A quality control system for all repair stations is now required. Should a requirement be developed for a repair station operations manual to cover the entire operation of a repair station rather than an inspection procedures manual, as now required? The minimum contents of such a repair station operations manual could be set forth in the rule, including a provision in the manual for procedures required to be accomplished prior to the removal or addition of a product for maintenance, preventive maintenance, or alteration by a repair station. Experience also has shown the need for a repair station to specifically cover in its manual those steps to be taken by the repair station to assure compliance with the approved provisions in its manual. The section on return to service of an item worked on and inspections of work performed by a repair station could be updated. Comments are specifically requested on the concept of an "operations manual" and its estimated costs.

4. Manufacturer's Maintenance Facility

Consideration is being given to deleting Part 145, Subpart D, "Limited Ratings for Manufacturers." The concept of a manufacturer's repair station could be incorporated in a revised Part 145, but a separate Subpart D may not be necessary. It is recognized that a manufacturer's repair station operates in compliance with the maintenance rules set forth in Part 43 and Part 145, however, there are certain provisions in Part 145 that could be made applicable to manufacturers by granting them similar privileges now provided to certificated repair stations operating under other than current Part 145, Subpart D.

5. Contracting by Repair Stations

The FAA has received several requests to update and expand sections of Part 145 relating to FAA authorized contracting by repair stations of certain work to other facilities. In this regard, should existing Part 145, Appendix A be deleted or should the Appendix be retained and updated accordingly to reflect the current state of the art for repair stations in line with any revisions and modifications to repair station ratings and classes?

A revision to Part 145 could include modifications of those functions (asterisked items in Appendix A) that can be contracted by a repair station to another facility. Comments are specifically requested on the equipment requirements of the various repair station ratings as well as those asterisked items setting forth those functions that could be contracted out by a repair station. The FAA has received recommendations from the industry that a distinction be made to set forth the type of a facility to which a repair station could contract out work. For example, a single asterisk (*) would permit contracting out work only to a certificated repair station, whereas a double asterisk (**) would permit the contracting out of the stated function to a noncertificated facility. Is such a distinction viable? If so, which items of equipment and functions should be contracted out for each rating and class and which should be contracted out to a noncertificated facility?

6. Repair Station Privileges

The privileges granted to the holder of an FAA Repair Station Certificate could

be clarified and revised. A separate paragraph regarding repair stations that are considered subsidiaries (satellite stations) of a permanent repair station could be included in the rule as well as a paragraph on air carrier line station authority. The FAA is aware that some confusion has arisen regarding the establishment, control, and location of satellite repair stations as well as the FAA's basic requirements related to their facilities, housing, equipment, and personnel. The material on satellite repair stations contained in FAA Order 8300.9 may be appropriate for inclusion in the rules. For a repair station that does work for an air carrier or commercial operator having a continuous airworthiness program where the repair station is co-located at a line station for a certificated air carrier, the repair station could be approved to perform servicing and preventive maintenance in accordance with that air carrier's maintenance manual. Are these suggestions warranted? Should the present practices be recognized in the regulations by their inclusion in any revision?

7. Facility, Housing, and Equipment Requirements

The facility, housing, and equipment requirements for repair stations may need to be updated and revised. To provide a repair station with the mobility to temporarily perform maintenance functions at a place other than the repair station, a suggestion has been made to clarify the need for a repair station to perform maintenance, preventive maintenance, or alteration of an aircraft at a place other than the fixed location of the repair station. Suggestions have also been made to update and clarify the requirements for changing the location or facilities of a repair station. Such changes may no longer require a formal change of a repair station's certificate, provided the change has FAA approval, and the procedures for the change are set forth in the repair station's manual. Should this approach be considered?

Housing requirements for repair stations with the existing airframe rating could also be reviewed and clarified, particularly as to housing required for large aircraft. Should housing be required for the heaviest/largest aircraft of a given class or only for the aircraft being worked on by the repair station? It is conceivable that by changing the classes of an airframe or aircraft rating as discussed above, a repair station working on DC–9s would require housing for that aircraft and not for a B–747 as has been contended for a Class 4 airframe rating in the past. Does this approach have merit?

Although it is recognized that a repair station must have the equipment and materials necessary to efficiently perform the functions appropriate to the rating and class held by the repair station, a repair station with a limited rating may not need to be equipped for a function that does not apply to the particular make and model for which the repair station has a rating. Should this be clarified in the regulations?

8. Recordkeeping and Report Requirements

Consideration is being given to revising the recordkeeping and report requirements of Part 145 to ensure that they are consistent with safety requirements, yet are not overly burdensome to the repair station industry. A suggested change could require that: (1) A copy of the work record be prepared and given to the operator/owner; (2) a signature of an appropriately authorized official of the repair station should be on the record; (3) record retention should be based on the return to service date of the repaired part rather than when the repair work was accomplished; and (4) required records and reports be maintained for 5 years, except if the repair station is approved by the FAA to use an automated data processing system for its recordkeeping, in which case hard copies of such records and reports need only be maintained for a period of 2 years. Comments are requested on these suggestions as well as information on present practices of record retention by repair stations and costs involved for any change in such requirements.

9. Management, Inspection Personnel, and Repairmen Qualifications

It may be advantageous to update and clarify the rules of management/supervisory and inspection personnel at a repair station. Consideration is being given to clearly establish in the regulations, the qualification, training, and experience requirements for such personnel for a repair station, taking into consideration the particular rating and class of the station. Such requirements could be similar to those requirements for other quality control organizations (e.g., Parts 121 and 135 maintenance requirements). Comments are solicited on revising the requirements. Suggested requirements for inclusion in the regulation for the qualification, training, and experience of such personnel are particularly solicited.

Also, the requirements concerning repairmen certification and qualification in both Part 65, Subpart E and Part 145 may need to be updated and revised. With changes to Part 65, Subpart E, those provisions in Part 145 relating to repairmen could be revised in accordance with the certification requirements in Part 65. How should the repairmen sections be handled in both Parts 65 and 145? What are the costs, if any, that may be involved in adopting these suggestions?

10. Additional

Participants in these public meetings are invited to express any additional views and recommendations for changes to Parts 43; 65, Subpart E; and 145.

Meeting Procedures

The following procedures are established to facilitate the meetings:

1. There will be no admission fee or other charge to attend and participate in the meetings. The meetings will be open, on a space-available basis, to all persons who register. If practicable, the meetings may be accelerated to enable adjournment in less than the scheduled time.

2. The meetings will be chaired by the FAA. A panel of FAA personnel involved in this rulemaking project will be present.

3. All sessions will be recorded by a court reporter. Anyone who is interested in purchasing a copy of the transcript of the proceedings should contact the court reporter directly. A copy of the transcript and any material accepted by the FAA panel will be placed in the docket.

4. The FAA will consider all material presented by participants at the meetings and all comments will be forwarded to the public docket. Position papers or handout material concerning the topics may be accepted at the discretion of the chairperson of each meeting. However, enough copies must be provided for distribution to the FAA panel and to other participants at that meeting.

5. Statements by FAA personnel at the meetings will be made to facilitate discussion, but should not be considered as expressing FAA positions.

Daniel C. Beaudette,

Acting Director, Flight Standards Service.

Issued in Washington, DC, on July 14, 1989.

[FR Doc. 89–17239 Filed 7–21–89; 8:45 am]

BILLING CODE 4910–13–M

federal register

Monday
July 24, 1989

Part VI

The President

Proclamation 5999—Space Exploration Day, 1989

Federal Register
Vol. 54, No. 140
Monday, July 24, 1989

Presidential Documents

Title 3—

The President

Proclamation 5999 of July 20, 1989

Space Exploration Day, 1989

By the President of the United States of America

A Proclamation

Twenty years ago, on July 20, 1969, American astronauts landed on the Moon, changing forever our perception of the universe and our relation to it. That "giant leap for mankind," a quarter of a million miles from Earth, was more than a triumph of human ingenuity, skill, and courage—it was a tribute to the indomitable American spirit.

The lunar landing would not have been possible without the vision, determination, and technological genius that Americans, working together, have demonstrated throughout our Nation's history. Like the Viking and Voyager missions, the space shuttle, and other programs that have since followed, the lunar landing gave compelling testimony to the faith and tenacity of the American people. It also reflected the extraordinary talent and dedication of men and women throughout the National Aeronautics and Space Administration, the United States Armed Forces, the American aerospace industry, and educational institutions across the country. Those are qualities of which we are still very proud today.

Three decades into our great adventure into space, we have learned more about our planet, the solar system, and the universe than was once imaginable. We have entered space for peaceful and scientific purposes; and, in the process, we have demonstrated what Americans can do when we put our will and our resources to work in pursuit of a worthy national goal.

As a Nation, we have traveled hundreds of millions of miles in space, but we have only begun our journey. In the coming decades, we will continue to forge ahead, transforming dreams into reality. By the end of the century, Space Station Freedom—which we are developing in cooperation with our friends and allies—will create new opportunities for commerce and discovery and provide a base for further exploration of the infinite frontier of space.

Two decades ago, the men of Apollo 11 began our journey into the universe, taking with them our heartfelt prayers and our highest hopes. They opened a door that can never be closed and, in so doing, changed forever the course of human history. As we continue to follow the steps of those brave pioneers, wherever we travel, we will, like them, have come in peace for all mankind.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 20, 1989, as Space Exploration Day. I call upon the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of July, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-17440
Filed 7-21-89; 11:20 am]
Billing code 3195-01-M

federal register

Monday
July 24, 1989

Part VII

International Trade Commission

Sanction for Breach of Commission Protective Order; Notice

Legislative Digest

INTERNATIONAL TRADE COMMISSION

Sanction for Breach of Commission Protective Order

AGENCY: U.S. International Trade Commission.

ACTION: Sanction for breach of Commission Protective Order.

SUMMARY: Notice is given that the Commission has determined that Ms. F. Amanda DeBusk, Esq., has breached a Commission administrative protective order by issuing instructions that led directly to the transmission of a document containing business proprietary information released under protective order to persons not authorized to receive it. As sanctions, the Commission has (1) suspended Ms. DeBusk from access to information released under any Commission protective order until the Commission concludes (or should the Department of Commerce's final determinations be negative, until the Commission would have been scheduled to conclude) its final investigations in *Certain Telephone Systems and Subassemblies Thereof from Japan, Korea, and Taiwan*, Invs. Nos. 731–TA–426–428; and (2) issued a public letter of reprimand to Ms. DeBusk.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202)–252–1116. A copy of the public letter of reprimand is on file at the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202)–252–1000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202)–252–1810.

Authority: The authority for this action is conferred by 19 U.S.C. 1677f(c)(1)(B), and by Rule 207.7 of the Commission's Rules of Practice and Procedure (19 CFR 207.7, as amended).

By order of the Commission.

Jim Craig,

Acting Secretary.

Issued: July 21, 1989.

[FR Doc. 89–17439 Filed 7–21–89; 11:45 am]

BILLING CODE 7020-02-M

federal register

Monday
July 24, 1989

Part VIII

Department of Energy

Office of the Secretary

Public Hearings to Solicit Views From Public Officials and the General Public on the Development of a National Energy Strategy; Change in Hearing Location; Notice

DEPARTMENT OF ENERGY

Office of the Secretary

Public Hearings to Solicit Views From Public Officials and the General Public on the Development of a National Energy Strategy; Change in Hearing Location

AGENCY: Office of the Secretary, DOE.

ACTION: Change in hearing location.

On July 21, 1989, the Department of Energy published a notice document in the **Federal Register** announcing the first in a series of hearings to solicit views from public officials and the general public on the development of a national energy strategy. The initial hearing is scheduled for August 1, 1989, from 8:45 a.m. to 12:00 Noon and 2:00 p.m. to 5:00 p.m. In order to accommodate a large number of participants, the hearing location has been changed to the Departmental Auditorium, 12th and Pennsylvania Avenue, NW., Washington, DC. The date and time remain the same.

FOR FURTHER INFORMATION CONTACT: Ruth L. Burns, Office of Policy, Planning and Analysis, U.S. Department of Energy, (202) 586–4767.

Linda G. Stuntz,

Deputy Under Secretary, Office of Policy, Planning and Analysis, Department of Energy.

[FR Doc. 89–17448 Filed 7–21–89; 11:49 am]

BILLING CODE 6450–01–M

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LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2848/Pub. L. 101-56

Computer Matching and Privacy Protection Act Amendments of 1989. (July 19, 1989; 103 Stat. 149; 2 pages) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1988 Compilation and Parts 100 and 101)	21.00	[1] Jan. 1, 1989
4	14.00	Jan. 1, 1988
5 Parts:		
1-699	14.00	Jan. 1, 1988
700-1199	15.00	Jan. 1, 1988
*1200-End, 6 (6 Reserved)	13.00	Jan. 1, 1989
7 Parts:		
0-26	15.00	Jan. 1, 1988
27-45	12.00	Jan. 1, 1989
46-51	16.00	Jan. 1, 1988
52	23.00	[2] Jan. 1, 1988
53-209	18.00	Jan. 1, 1988
210-299	22.00	Jan. 1, 1988
300-399	12.00	Jan. 1, 1989
400-699	17.00	Jan. 1, 1988
700-899	22.00	Jan. 1, 1988
900-999	26.00	Jan. 1, 1988
1000-1059	15.00	Jan. 1, 1988
1060-1119	12.00	Jan. 1, 1988
1120-1199	11.00	Jan. 1, 1989
1200-1499	17.00	Jan. 1, 1988
1500-1899	9.50	Jan. 1, 1988
1900-1939	11.00	Jan. 1, 1988
1940-1949	21.00	Jan. 1, 1988
1950-1999	18.00	Jan. 1, 1988
2000-End	6.50	Jan. 1, 1988
8	11.00	Jan. 1, 1988
9 Parts:		
1-199	19.00	Jan. 1, 1988
200-End	17.00	Jan. 1, 1988
10 Parts:		
0-50	18.00	Jan. 1, 1988
51-199	14.00	Jan. 1, 1988
200-399	13.00	[3] Jan. 1, 1987
400-499	13.00	Jan. 1, 1988
500-End	24.00	Jan. 1, 1988
11	10.00	[2] Jan. 1, 1988
12 Parts:		
1-199	11.00	Jan. 1, 1988
200-219	10.00	Jan. 1, 1988
220-299	14.00	Jan. 1, 1988
*300-499	15.00	Jan. 1, 1989
500-599	18.00	Jan. 1, 1988
600-End	12.00	Jan. 1, 1988
13	20.00	Jan. 1, 1988
14 Parts:		
1-59	21.00	Jan. 1, 1988
60-139	19.00	Jan. 1, 1988
140-199	10.00	Jan. 1, 1989
200-1199	20.00	Jan. 1, 1988
1200-End	12.00	Jan. 1, 1988
15 Parts:		
0-299	10.00	Jan. 1, 1988
300-399	20.00	Jan. 1, 1988
400-End	14.00	Jan. 1, 1988
16 Parts:		
0-149	12.00	Jan. 1, 1989
150-999	13.00	Jan. 1, 1988
1000-End	19.00	Jan. 1, 1989
17 Parts:		
1-199	14.00	Apr. 1, 1988
200-239	14.00	Apr. 1, 1988
240-End	21.00	Apr. 1, 1988
18 Parts:		
1-149	15.00	Apr. 1, 1988
150-279	12.00	Apr. 1, 1988
280-399	13.00	Apr. 1, 1988
400-End	9.00	Apr. 1, 1988
19 Parts:		
1-199	27.00	Apr. 1, 1988
200-End	5.50	Apr. 1, 1988
20 Parts:		
1-399	12.00	Apr. 1, 1988
400-499	23.00	Apr. 1, 1988
500-End	25.00	Apr. 1, 1988
21 Parts:		
1-99	12.00	Apr. 1, 1988
100-169	14.00	Apr. 1, 1988
170-199	16.00	Apr. 1, 1988
200-299	5.00	Apr. 1, 1988
300-499	26.00	Apr. 1, 1988
500-599	20.00	Apr. 1, 1988
600-799	7.50	Apr. 1, 1988
800-1299	16.00	Apr. 1, 1988
1300-End	6.00	Apr. 1, 1988
22 Parts:		
1-299	20.00	Apr. 1, 1988
300-End	13.00	Apr. 1, 1988
23	16.00	Apr. 1, 1988
24 Parts:		
0-199	15.00	Apr. 1, 1988
200-499	26.00	Apr. 1, 1988
500-699	9.50	Apr. 1, 1988
700-1699	19.00	Apr. 1, 1988
1700-End	15.00	Apr. 1, 1988
25	24.00	Apr. 1, 1988
26 Parts:		
§§ 1.0-1-1.60	13.00	Apr. 1, 1988
§§ 1.61-1.169	23.00	Apr. 1, 1988
§§ 1.170-1.300	17.00	Apr. 1, 1988
§§ 1.301-1.400	14.00	Apr. 1, 1988
§§ 1.401-1.500	24.00	Apr. 1, 1988
§§ 1.501-1.640	15.00	Apr. 1, 1988
§§ 1.641-1.850	17.00	Apr. 1, 1988
§§ 1.851-1.1000	28.00	Apr. 1, 1988
§§ 1.1001-1.1400	16.00	Apr. 1, 1988
§§ 1.1401-End	21.00	Apr. 1, 1988
2-29	19.00	Apr. 1, 1988
30-39	14.00	Apr. 1, 1988
40-49	13.00	Apr. 1, 1988
50-299	15.00	Apr. 1, 1988
300-499	15.00	Apr. 1, 1988
500-599	8.00	[4] Apr. 1, 1980
600-End	6.00	Apr. 1, 1988
27 Parts:		
1-199	23.00	Apr. 1, 1988
200-End	13.00	Apr. 1, 1988
28	25.00	July 1, 1988

Title	Price	Revision Date
29 Parts:		
0–99	17.00	July 1, 1988
100–499	6.50	July 1, 1988
500–899	24.00	July 1, 1988
900–1899	11.00	July 1, 1988
1900–1910	29.00	July 1, 1988
1911–1925	8.50	July 1, 1988
1926	10.00	July 1, 1988
1927–End	24.00	July 1, 1988
30 Parts:		
0–199	20.00	July 1, 1988
200–699	12.00	July 1, 1988
700–End	18.00	July 1, 1988
31 Parts:		
0–199	13.00	July 1, 1988
200–End	17.00	July 1, 1988
32 Parts:		
1–39, Vol. I	15.00	[5] July 1, 1984
1–39, Vol. II	19.00	[5] July 1, 1984
1–39, Vol. III	18.00	[5] July 1, 1984
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630–699	13.00	[6] July 1, 1986
700–799	15.00	July 1, 1988
800–End	16.00	July 1, 1988
33 Parts:		
1–199	27.00	July 1, 1988
200–End	19.00	July 1, 1988
34 Parts:		
1–299	22.00	July 1, 1988
300–399	12.00	July 1, 1988
400–End	26.00	July 1, 1988
35	9.50	July 1, 1988
36 Parts:		
1–199	12.00	July 1, 1988
200–End	20.00	July 1, 1988
37	13.00	July 1, 1988
38 Parts:		
0–17	21.00	July 1, 1988
18–End	19.00	July 1, 1988
39	13.00	July 1, 1988
40 Parts:		
1–51	23.00	July 1, 1988
52	27.00	July 1, 1988
53–60	28.00	July 1, 1988
61–80	12.00	July 1, 1988
81–99	25.00	July 1, 1988
100–149	25.00	July 1,1988
150–189	24.00	July 1, 1988
190–299	24.00	July 1, 1988
300–399	8.50	July 1,1988
400–424	21.00	July 1, 1988
425–699	21.00	July 1, 1988
700–End	31.00	July 1, 1988
41 Chapters:		
1, 1–1 to 1–10	13.00	[7] July 1, 1984
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7	6.00	[7] July 1, 1984
8	4.50	[7] July 1, 1984
9	13.00	[7] July 1, 1984
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1–100	10.00	July 1, 1988
101	25.00	July 1, 1988
102–200	12.00	July 1, 1988
201–End	8.50	July 1, 1988

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42 Parts:		
1–60	15.00	Oct. 1, 1988
61–399	5.50	Oct. 1, 1988
400–429	22.00	Oct. 1, 1988
430–End	22.00	Oct. 1, 1988
43 Parts:		
1–999	15.00	Oct. 1, 1988
1000–3999	26.00	Oct. 1, 1988
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44	20.00	Oct. 1, 1988
45 Parts:		
1–199	17.00	Oct. 1, 1988
200–499	9.00	Oct. 1, 1988
500–1199	24.00	Oct. 1, 1988
1200–End	17.00	Oct. 1, 1988
46 Parts:		
1–40	14.00	Oct. 1, 1988
41–69	14.00	Oct. 1, 1988
70–89	7.50	Oct. 1, 1988
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140–155	12.00	Oct. 1, 1988
156–165	13.00	Oct. 1, 1988
166–199	14.00	Oct. 1, 1988
200–499	20.00	Oct. 1, 1988
500–End	10.00	Oct. 1, 1988
47 Parts:		
0–19	18.00	Oct. 1, 1988
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40–69	9.00	Oct. 1, 1988
70–79	18.00	Oct. 1, 1988
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48 Chapters:		
1 (Parts 1–51)	28.00	Oct. 1, 1988
1 (Parts 52–99)	18.00	Oct. 1, 1988
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2 (Parts 252–299)	18.00	Oct. 1, 1988
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7–14	25.00	Oct. 1, 1988
15–End	26.00	Oct. 1, 1988
49 Parts:		
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178–199	20.00	Oct. 1, 1988
200–399	19.00	Oct. 1, 1988
400–999	24.00	Oct. 1, 1988
1000–1199	18.00	Oct. 1, 1988
1200–End	18.00	Oct. 1, 1988
50 Parts:		
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.