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Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

Milk Price Support Program

AGENCY: Commodity Credit Corporation.
ACTION: Interim rule.

SUMMARY: This interim rule amends the provisions of 7 CFR Part 1430 to implement a 2½ cents per hundredweight reduction in the price received by producers for all milk produced within the forty-eight continguous states of the continental United States and marketed for commercial use in calendar year 1988, as required by amendments made to the Agricultural Act of 1949 by the Omnibus Budget Reconciliation Act of 1987.

DATES: The effective date of the interim rule is January 1, 1988. Comments must be received by March 7, 1988 to be assured of consideration.

ADDRESS: Mail comments to Joseph E. Chervenic, Fiscal Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Joseph E. Chervenic at the above address, (202) 447–3679.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulations 1512–1 and has been classified "nonmajor". It has been determined that the provisions of this rule will not result in an annual effect on the national economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rule-making with respect to the subject matter of this rule.

It has been determined by an environmental assessment that this action will have no significant adverse impact on the quality of the human environment. Therefore, an environmental impact statement is not needed. Copies of the environmental assessment are available upon written request.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loans and Purchases—10.051, as found in the Catalog of Federal Domestic Assistance.

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

A final regulatory impact analysis of this regulation is available from Joseph E. Chervenic.

Section 201(d) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)) was amended in 1985 to provide for a reduction to be made in the price of all milk produced within the forty-eight continguous states of the continental United States and marketed by producers for commercial use during the period from April 1, 1986 through September 30, 1987.

The recently enacted Omnibus Budget Reconciliation Act of 1987 provides that, subject to the same conditions that were applicable to the April 1, 1986 through September 30, 1987 reductions, the Secretary shall provide during the calendar year 1988, for a reduction of 2½ cents per hundredweight to be made in the price received by producers for all milk produced within the forty-eight contiguous states of the continental United States and marketed by producers for commercial use. The regulations found at 7 CFR 1430.340–1430.351 are amended to implement that reduction.

Since these reductions in the price received by producers for milk marketed for commercial use are required to be implemented effective for calendar year 1988, this interim rule is effective January 1, 1988. However, comments are requested and must be received by March 7, 1988 to be assured of consideration.

List of Subjects in 7 CFR Part 1430

Milk, Agriculture, Price support programs, Dairy products.

Interim Rule

Accordingly, 7 CFR Part 1430, Dairy Products, is amended as follows:

PART 1430—[AMENDED]

1. The reference in the table of Contents for Part 1430 to "Subpart—Regulations Governing Reductions in the Price of Milk Marketed by Producers, April 1, 1986 to September 30, 1987" is revised to read: "Subpart—Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1988 to December 31, 1988".

2. The authority citation for Part 1430 is revised to read as follows:

Authority: Sec. 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446); Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714 *et seq.*), unless otherwise noted.

3. The heading of the Subpart (consisting of §§ 1430.340 through 1430.351) in Part 1430 entitled "Subpart—Regulations Governing Reductions in the Price of Milk Marketed by Producers, April 1, 1986 to September 30, 1987", is revised to read: "Subpart—Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1988 to December 31, 1988".

4. The authority citation for the subpart the heading of which is revised by paragraph 3 shall continue to read as follows:

Authority: Section 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446(d)), Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714 *et seq.*).

5. Section 1430.340 is revised to read as follows:

§ 1430.340 General statement.

(a) *Purpose.* This subpart implements the provisions of section 201(d) of the Agricultural Act of 1949, as amended, under which the Secretary of Agriculture is required to provide with respect to milk marketed during calendar year 1988, for reductions in the price received by producers for all milk produced in the

United States and marketed by producers for commerical use.

(b) *Applicability.* The provision of this subpart shall apply to all milk produced in the United States that is marketed for commerical use by producers during the period beginning on January 1, 1988 and ending December 31, 1988.

6. Section 1430.343(a) is revised to read in its entirety as follows:

§ 1430.343 Required reductions and remittances.

(a) *Required reductions.* A reduction of two and one half (2½) cents per hundredweight shall be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the period beginning on January 1, 1988, and ending December 31, 1988.

* * * * *

Signed at Washington, DC, on December 31, 1987.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 87-30216 Filed 12-31-87; 3:31 pm]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 71144-7244]

Amendment of Validated License Controls on Isopropyl N-(3-chlorophenyl)carbamate

AGENCY: Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls.

This rule amends the validated export license controls on alkyl aryl carbamates described in paragraph (b)(1) of the "List of Chemicals Controlled by ECCN 4707B" in ECCN 4707B on the CCL (Supplement No. 1 to § 399.1). This action is in accordance with a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. Isopropyl N-(3-chlorophenyl)carbamate, an alkyl aryl carbamate, no longer requires a validated license for export to all destinations, except Country Groups S and Z for which exports of the chemical will be controlled for foreign policy reasons under ECCN 6799G on the CCL.

Notice of the foreign availability determination on this chemical has been published previously (52 FR 49183, Dec. 30, 1987).

EFFECTIVE DATE: January 5, 1988.

FOR FURTHER INFORMATION CONTACT: Jo-Anne A. Jackson, Office of Foreign Availability, Department of Commerce, Telephone: (202) 377-5953.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final regulatory impact analysis has been or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

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

4. This rule involves a collection of information that is subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.).* This collection has been approved by the Office of Management and Budget under control number 0625-0001.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368-399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7—Chemicals, Metalloids, Petroleum Products and Related Materials, ECCN 4707B is amended by revising paragraph (b)(1) under the "List of Chemicals Controlled by ECCN 4707B" to read as follows:

4707B (a) Chemicals, as described in this entry; (b) Synthetic organic agriculture chemicals, as described in this entry.

Controls for ECCN 4707B

* * * * *

List of Chemicals Controlled by ECCN 4707B

* * * * *

(b) * * *

(1) Alkyl Aryl carbamates (including isopropyl N-phenylcarbamate), *except isopropyl N-(3-chlorophenyl) carbamate, 2,2-dimethyl 1,3-benzodioxol-4-ol methylcarbamate, and 1-naphthyl N-methylcarbamate.*

* * * * *

§ 399.2 [Amended]

3. In Supplement No. 1 to § 399.2 Commodity Interpretations, in Interpretation 24 (Chemicals), the "Organic Chemicals" list is amended by inserting "Isopropyl N-(3-chlorophenyl) carbamate" between "Isopropyl chloride" and "Isopropyl ether".

Dated: December 28, 1987.

Dan Hoydysh,

Director, Office of Technology and Policy Analysis.

[FR Doc. 88-62 Filed 1-4-88; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-73]

Staff Accounting Bulletin No. 73

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: Staff Accounting Bulletin No. 54 (SAB 54), which was released on November 3, 1983, expressed the staff's views regarding the application of the "push down" basis of accounting in the separate financial statements of subsidiaries acquired in purchase transactions. Since the issuance of SAB 54, the staff has received inquiries about its views with respect to recording (or "pushing down") parent company debt in the separate financial statements of the subsidiary when such debt is incurred in connection with or otherwise related to the acquisition of the subsidiary in a purchase transaction. This staff accounting bulletin addresses these issues.

DATE: December 30, 1987.

FOR FURTHER INFORMATION CONTACT: James R. Bradow, Office of the Chief Accountant (202/272–2130) or Howard P. Hodges, Jr., Division of Corporation Finance (202/272–2553), Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,

Secretary.

December 30, 1987.

PART 211—[AMENDED]

Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 73 to the table found in Subpart B.

Staff Accounting Bulletin No. 73

The staff hereby adds Questions 3 to Topic 5.J. of the Staff Accounting Bulletin Series. Topic 5.J. discusses the staff's position on the appropriateness of applying the "push down" method of accounting in the separate financial statements of subsidiaries acquired in purchase transactions.

Topic 5: Miscellaneous Accounting

* * * * *

J. Push Down Basis of Accounting Required in Certain Limited Circumstances

* * * * *

Question 3: Company A borrows funds to acquire substantially all of the common stock of Company B. Company B subsequently files a registration statement in connection with a public offering of its stock or debt.[1] Should Company B's new basis ("push down") financial statements include Company A's debt related to its purchase of Company B?

Interpretive Response: The staff believes that Company A's debt,[2] related interest expense, and allocable debt issue costs shuld be reflected in Company B's financial statements included in the public offering (or an initial registration under the Exchange Act) if: (1) Company B is to assume the debt of Company A, either presently or in a planned transaction in the future; (2) the proceeds of a debt or equity offering of Company B will be used to retire all or a part of Company A's debt; or (3) Company B guarantees or pledges its assets as collateral for Company A's debt.

Other relationships may exist between Company A and Company B, such as the pledge of Company B's stock as collateral for Company A's debt.[3] While in this latter situation, it may be clear that Company B's cash flows will service all or part of Company A's debt, the staff does not insist that the debt be reflected in Company B's financial statements providing there is full and prominent disclosure of the relationship between Companies A and B and the actual or potential cash flow commitment. In this regard, the staff believes that Statements of Financial Accounting Standards Nos. 5 and 57 require sufficient disclosure to allow users of Company B's financial statements to fully understand the impact of the relationship on Company B's present and future cash flows. Rule 4–08(e) of Regulation S–X (17 CFR 210.4–08(e)) also requires disclosure of restrictions which limit the payment of dividends. Therefore, the staff believes that the equity section of Company B's balance sheet and any pro forma financial information and capitalization tables should clearly disclose that this arrangement exists.[4]

Regardless of whether the debt is reflected in Company B's financial statements, the notes to Company B's financial statements should generally disclose, at a minimum: (1) The relationship between Company A and Company B; (2) a descripton of any arrangements that result in Company B's guarantee, pledge of assets [5] or stock, etc. that provides security for Company A's debt; (3) the extent (in the aggregate and for each of the five years subsequent to the date of the latest balance sheet presented) to which Company A is dependent on Company B's cash flows to service its debt and the method by which this will occur; and (4) the impact of such cash flows on Company B's ability to pay dividends or other amounts to holders of its securities.

Additionally, the staff believes Company B's Management's Discussion and Analysis of Financial Condition and Results of Operations should discuss any material impact of the servicing of Company A's debt on its own liquidity pursuant to Item 303(a)(1) of Regulations S–K (17 CFR 229.303(a)(1)).

[FR Doc. 88–74 Filed 1–4–88; 8:45 am]

BILLING CODE 8010–01–M

[1] The guidance in this Staff Accounting Bulletin should also be considered by Company B's separate financial statements included in its public offering following Company B's spin-off or carve-out from Company A.

[2] The guidance in this Staff Accounting Bulletin should also be considered where Company A has financed the acquisition of Company B through the issuance of mandatory redeemable preferred stock.

[3] The staff does not believe Company B's financial statements must reflect the debt in this situation because in the event of default on the debt by Company A, the debt holder(s) would only be entitled to B's stock held by Company A. Other equity or debt holders of Company B would retain their priority with respect to the net assets of Company B.

[4] For example, the staff has noted that certain registrants have indicated on the face of such financial statements (as part of the stockholders' equity section) the actual or potential financing arrangement and the registrant's intent to pay dividends to satisfy its parent's debt service requirements. The staff believes such disclosures are useful to highlight the existence of arrangements that could result in the use of Company B's cash to service Company A's debt.

[5] A material asset pledge should be clearly indicated on the face of the balance sheet. For example, if all or substantially all of the assets are pledged, the "assets" and "total assets" captions should include parenthetically: "pledged for parent company debt—See Note X."

17 CFR Part 211

[Release No. SAB—74]

Staff Accounting Bulletin No. 74

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views concerning disclosures that generally should be provided by a registrant when an accounting standard has been issued but not yet adopted.

DATE: December 30, 1987.

FOR FURTHER INFORMATION CONTACT: Jack C. Parsons, Office of the Chief Accountant (202/272–2130); or Howard P. Hodges, Jr., Division of Corporation Finance (202/272–2553), Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,

Secretary.

December 30, 1987.

PART 211—[AMENDED]

Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 74 to the table found in Subpart B.

Staff Accounting Bulletin No. 74

The staff hereby adds Section M to Topic 11. Topic 11–M expresses the staff's views concerning disclosure of the impact that recently issued accounting standards will have on the financial statements of the registrant when adopted in a future period.

Topic 11: Miscellaneous Disclosure

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M. *Disclosure of the Impact that Recently Issued Accounting Standards will have on the Financial Statements of the Registrant when Adopted in a Future Period.*

Facts: An accounting standard has been issued [1] that does not require adoption until some future date. A registrant is required to include financial statements in filings with the Commission after the issuance of the standard but before it is adopted by the registrant.

Question 1: Does the staff believe that these filings should include disclosure of the impact that the recently issued accounting standard will have on the financial position and results of operations of the registrant when such standard is adopted in a future period?

Interpretive Response: Yes. The Commission addressed a similar issue with respect to SFAS No. 52 and concluded that "The Commission also believes that registrants that have not yet adopted SFAS No. 52 should discuss the potential effects of adoption in registration statements and reports filed with the Commission."[2] The staff believes that this disclosure guidance applies to all accounting standards which have been issued but not yet adopted by the registrant unless the impact on its financial position and results of operations is not expected to be material.[3] Management's Discussion and Analysis ("MD&A") [4] requires registrants to provide information with respect to liquidity, capital resources and results of operations and such other information that the registrant believes to be necessary to understand to its financial condition and results of operations. In addition, MD&A requires disclosure of presently known material changes, trends and uncertainties that have had or that the registrant reasonably expects will have a material impact on future sales, revenues or income from continuing operations. The staff believes that disclosure of impending accounting changes is necessary to inform the reader about expected impacts on financial information to be reported in the future and, therefore, should be disclosed in accordance with the existing MD&A requirements.

With respect to financial statement disclosure, generally accepted auditing standards [5] specifically address the need for the auditor to consider the adequacy of the disclosure of impending changes in accounting principles if (a) the financial statements have been prepared on the basis of accounting principles that were acceptable at the financial statement date but that will not be acceptable in the future and (b) the financial statements will be restated in the future as a result of the change. The staff believes that recently issued accounting standards may constitute material matters and, therefore, disclosure in the financial statements should also be considered in situations where the change to the new accounting standard will be accounted for in financial statements of future periods, prospectively or with a cumulative catch-up adjustment.

Question 2: Does the staff have a view on the types of disclosure that would be meaningful and appropriate when a new accounting standard has been issued but not yet adopted by the registrant?

Interpretive Response: The staff believes that the registrant should evaluate each new accounting standard to determine the appropriate disclosure and recognizes that the level of information available to the registrant will differ with respect to various standards and from one registrant to another. The objectives of the disclosure should be to (1) notify the reader of the disclosure documents that a standard has been issued which the registrant will be required to adopt in the future and (2) assist the reader in assessing the significance of the impact that the standard will have on the financial statements of the registrant when adopted. The staff understands that the registrant will only be able to disclose information that is known.

The following disclosures should generally be considered by the registrant:

- A brief description of the new standard, the date that adoption is required and the date that the registrant plans to adopt, if earlier.
- A discussion of the methods of adoption allowed by the standard and the method expected to be utilized by the registrant, if determined.
- A discussion of the impact that adoption of the standard is expected to have on the financial statements of the registrant, unless not known or reasonably estimable. In the case, a statement to that effect may be made.
- Disclosure of the potential impact of other significant matters that the registrant believes might result from the

[1] Some registrants may want to disclose the potential effects of proposed accounting standards not yet issued, e.g., exposure drafts. Such disclosures, which are generally not required because the final standard may differ from the exposure draft, are not addressed by this SAB. [See also Financial Reporting Release No. 26, "Interpretive Release About Disclosure of the Effects of the Tax Reform Act of 1986," October 23, 1986.]

[2] Financial Reporting Release No. 6, "Interpretive Release About Disclosure Considerations Relating to Foreign Operations and Foreign Currency Translation Effects," Section No. 2 "Disclosures During the Transition Period".

[3] In those instances where a recently issued standard will impact the preparation of, but not materially affect, the financial statements, the registrant is encouraged to disclose that a standard has been issued and that its adoption will not have a material effect on its financial position or results of operations.

[4] Item 303 of Regulation S–K (17 CFR 229.303).

[5] As interpreted in Auditing Standards Division staff interpretation AU 9410 No. 3, "The Impact on an Auditor's Report of an FASB Statement Prior to the Statement's Effective Date," paragraphs .13–.19.

adoption of the standard (such as technical violations of debt covenant agreements, planned or intended changes in business practices, etc.) is encouraged.

[FR Doc. 88-73 Filed 1-4-88; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606, 610, and 640

[Docket No. 85N-0032]

General Biological Products Standards, Additional Standards for Human Blood and Blood Products; Test for Antibody to Human Immunodeficiency Virus (HIV)

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to require that each unit of human blood and blood components intended for use in preparing a product be tested and found negative by an approved test for antibody to human immunodeficiency virus (HIV). HIV, also known as human immunodeficiency virus type (HIV-1), lymphadenopathy-associated virus (LAV), or human T-lymphotropic virus type III (HTLV-III), is the etiologic agent of acquired immunodeficiency syndrome (AIDS). FDA believes that the voluntary routine testing of blood by an approved test for antibody to HIV is already decreasing the risk of transmitting HIV through the transfusion of blood and blood components and by the parenteral use of certain plasma derivatives.

DATES: Effective February 4, 1988. For human blood and blood component products collected on or after January 5, 1989, the product shall be labeled and instruction circulars shall be provided consistent with this final rule. Licensed establishments should submit draft revised labeling by March 7, 1988.

ADDRESS: Draft revised labeling should be sent to the Director, Office of Biologics Research and Review (HFN-800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steve F. Falter, Center for Biologics Evaluation and Research (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of February 21, 1986 (51 FR 6362), FDA proposed to amend the biologics regulations to require that each donation of human blood or blood components intended for use in a product be tested by a serologic test for HTLV-III, approved for such use by the Director, Office of Biologics Research and Review. (As discussed elsewhere in this preamble, FDA has decided that the virus should be identified as "Human Immunodeficiency Virus" or "HIV" and the required test should be identified as "a test for antibody to HIV." This nomenclature is used throughout the remainder of this preamble and in the final regulations.) The proposed requirements would apply to all human blood and blood components intended for use for any product, including products not subject to licensure as a biological product, such as human blood source material used in the manufacture of in vitro diagnostic reagents. In the February 21, 1986, proposal, FDA also proposed requirements concerning the proper labeling of human blood and blood components found nonreactive to a test for antibody to HIV, the qualifications of facilities that may conduct the testing, and restrictions on use of human blood and blood components that are repeatably reactive to a test for antibody to HIV or were collected from a donor whose blood is known to be repeatably reactive to a test for antibody to HIV.

In the preamble to the proposed rule, FDA also discussed the effect of the proposed rule on certain existing regulations, recommendations, and regulatory policies. FDA discussed its requirements and policies concerning the proper storage and disposition of human blood and blood components that are initially reactive or repeatably reactive, the maintenance of written standard operating procedures and records concerning the test, and the recommended procedures for notifying donors of repeatably reactive test results.

Blood establishments began testing human blood and blood components for antibody to HIV consistent with FDA recommendations in early 1985. Through routine inspections and special surveys, FDA has determined that blood establishments have instituted testing programs consistent with these regulations. In accordance with FDA recommendations, blood establishments are also conducting donor screening procedures designed to assure that persons at increased risk of HIV infection do not donate blood or blood components for transfusions or further manufacture. FDA issued the most recent recommendations on donor screening procedures to all registered blood establishments by a letter dated October 30, 1986. By a letter of April 29, 1987, FDA also issued to all registered blood establishments recommendations concerning a test protocol to clarify the status of donors with a reactive test for antibody to HIV. The agency is considering revising the donor suitability regulations in connection with HIV infection to codify existing policies. The purpose of this rulemaking is to establish in the regulations policies already in effect for assuring the continued safety of the blood supply by testing for antibody to HIV. The regulations thus reflect accepted procedures related to the test for antibody to HIV necessary for assuring the continued safety of the blood supply. The regulations will also provide FDA clear enforcement authority in the event that deviations from the accepted testing procedures are discovered.

II. Comments

FDA provided interested persons 30 days to submit written comments on the proposed rule. FDA received 31 letters of comment in response to the proposal. All of the letters supported, in general, FDA's proposed actions. A summary of the comments and FDA's responses follow.

A. Legal Issues

1. Three comments requested that FDA indicate clearly in the final regulations that the Federal requirements for determining donor suitability, product labeling, and the conduct and interpretation of HIV antibody testing are intended to preempt State and local regulation in those specific areas.

FDA believes that the actions requested by the comments are beyond the scope of this rulemaking. In the proposed rule, FDA did not discuss the possible preemptive effect of any of the regulations in this final rule. Nor did FDA propose to revise existing regulations concerning donor suitability or product labeling other than in connection with HIV antibody testing. The comments requested Federal preemption of donor suitability and blood product labeling requirements in general, as well as requirements related to HIV antibody testing. To assure an adequate opportunity for all interested persons, including State and local authorities as well as the blood industry, to consider the issues concerning preemption raised by these comments,

FDA intends to publish in the **Federal Register** a notice that will discuss these issues and provide an opportunity for public comment on them.

2. One comment requested further information on the authority of FDA's Office of Biologics Research and Review (OBRR) to place restrictions on the sale of certain in vitro diagnostic products that are regulated as medical devices and are manufactured from blood components that are reactive for a test for antibody to HIV.

The regulations in this final rule do not apply directly to the sale of in vitro diagnostic products. The regulations apply to blood establishments that collect blood and blood components and place restrictions on the uses of human blood materials that test repeatably reactive for antibody to HIV. The sections of the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act (the act) authorizing promulgation of these regulations are listed in the authority citations in paragraphs 1 and 3 on page 6367 and in paragraph 5 on page 6368 of the proposal in the **Federal Register** of February 21, 1986, and are repeated in the authority citations listed below. The regulations require that all human blood intended for further manufacturing be tested and found negative for antibody to HIV; therefore, source blood or plasma that is untested or that tests repeatably reactive would be unavailable for use in manufacturing in vitro diagnostic products without an exception approved by OBRR under § 610.45(c)(1) of the final rule.

FDA is amending the final rule by removing specific references to the Director, Office of Biologics Research and Review. FDA is amending the regulations so that they will not have to be amended again in the event that the title of the organizations or the delegation of authority is changed in the future.

Finished products determined by FDA to be appropriately regulated as medical devices would be regulated under the provisions of the 1976 Medical Device Amendments of the act and implementing regulations in 21 CFR Part 800. Implementation of the requirements concerning medical devices would be by FDA's Center for Devices and Radiological Health or OBRR, in accordance with the delegations of authority in 21 CFR 5.47 through 5.59.

B. Terms and Definitions

3. Five comments recommended that the viral agent be identified as "Human T-Lymphotropic Virus Type III/ Lymphadenopathy-Associated Virus (HTLV-III/LAV)" wherever the term appears in the regulations. Several other comments recommended that the viral agent be identified as "Lymphadenopathy-Associated Virus/ Human T-Lymphotropic Virus Type III (LAV/HTLV-III)." One of these comments, from a manufacturer of test kits, stated that the current term discriminates unfairly against its serologic test product, which identifies the virus as LAV.

FDA has decided to identify the virus as human immunodeficiency virus (HIV) in the regulations. FDA used the term "HTLV-III" in the proposed rule because it was the term used most widely in the United States at the time. HIV is now used most widely in scientific literature and is the term recommended by the international body charged with assigning nomenclature.

In May 1986, a subcommittee of the International Committee on the Taxonomy of Viruses (ICTV) proposed that the term "Human Immunodeficiency Virus (HIV)" be recognized as the name for the AIDS virus. The term "Human Immunodeficiency Virus" and the acronym "HIV" are used increasingly in scientific literature and are now accepted widely. Accordingly, FDA is amending the regulations by using the terms "Human Immunodeficiency Virus" and "HIV" to identify the virus. The term "HIV," as used in this regulation, is intended to encompass the terms "LAV" (now "LAV-I"), "HTLV-III," and "HIV-I," which have also been used to describe the AIDS virus.

FDA has already notified manufacturers of test kits that the proper name of the licensed reagent will be changed to "Human Immunodeficiency Virus." The new proper name should appear on product labeling shortly. Manufacturers of test kits may continue to identify the virus as an HTLV-III or LAV isolate in the product labeling and to incorporate either term in the trade name of the product.

Similarly, FDA is requiring that blood establishments revise their product labeling consistent with 21 CFR 606.122(e) and 640.70(a)(11) of the final rule. FDA discusses the procedures and schedule for these labeling revisions in the response to the following comment.

4. One comment asked that for clarity and accuracy the regulations refer to "a serologic test for antibody to HIV" rather than "a serologic test for HIV."

FDA agrees with the comment. In the proposed rule, FDA omitted the word "antibody" to provide flexibility in the regulations in case tests other than tests for antibody become available in the future. However, on review, FDA finds it important to emphasize in the regulations and product labeling that the current test is a test for antibody to HIV and does not detect directly the virus that causes AIDS. In addition, FDA finds that by specifying that the test is for the detection of antibody, the term "serologic" is no longer necessary for adequately identifying the test and is omitting the term in the final rule. Finally, in the proposed rule, FDA used the term "nonreactive" in certain proposed testing and labeling requirements. Upon review, FDA believes the term "negative" is more appropriate to designate blood samples in which antibody to HIV is not detected. "Negative" is a more general term that will be applicable regardless of the types of tests for detecting the presence of antibody to HIV that may be used in the future. Furthermore, the term "negative" more directly relates to the interpretation of the test results that antibody is not present in the test sample. See also FDA's response to the next comment. Accordingly, FDA is amending the final rule, including the product labeling requirements in §§ 606.122(e) and 640.70(a)(11), to refer to "a test for antibody to HIV" or "Negative by a test for antibody to HIV," as appropriate.

FDA is requiring that human blood and blood components collected on or after January 5, 1989 be labeled and revised instruction circulars be made available consistent with the final regulations. Blood establishments are currently labeling these blood products consistent with the proposed rule. Blood and blood components collected before the effective date need not be relabeled to reflect the change in terminology. Licensed blood establishments should submit draft revised labeling to the Director, Office of Biologics Research and Review, by March 7, 1988, to assure the timely review and approval of the labeling.

FDA continues to believe that the regulations should provide adequate flexibility to allow the immediate use of newly approved tests, other than a test for antibody, for the screening of blood and blood components for evidence of HIV. Accordingly, FDA is amending § 610.45(a) in the final rule by redesignating proposed § 610.45(a) as § 610.45(a)(1) and adding new § 610.45(a)(2) to provide for the use of other tests approved by FDA in place of a test for antibody to HIV, as specified by FDA. FDA emphasizes that tests alternative to a test for antibody to HIV are not currently in use for screening blood, nor may they be used without FDA approval. However, these

amendments will provide for immediate use of an alternative test upon FDA approval without requiring concurrent amendment of the regulations.

5. One comment on proposed §§ 606.122(e) and 640.70(a)(11) requested that the term "nonreactive" be defined in the regulations to include "nonrepeatably reactive" as well as "initially nonreactive" test results.

As discussed in response to the previous comment, FDA has decided to use the term "negative" in place of the term "nonreactive" in the regulations. FDA believes it is inappropriate to define "negative" in the regulations. For currently approved test systems, a blood sample that tests reactive upon initial testing but does not react in successive repeat tests, i.e., is not repeatably reactive, is considered negative for antibody. The labeling accompanying licensed test kits describes the criteria for determining that a blood sample is negative. (Some test kit labeling may still use the term "nonreactive," but manufacturers of these test kits are now revising the labeling to use the term "negative.") As current tests are improved or new tests become available, the definition of "negative," as defined in the test kit labeling, may be changed. Because the term negative is adequately defined in test kit labeling and the definition is subject to change, FDA believes it is inappropriate to define the term in the regulations.

6. Two comments on § 610.45(c)(1) and the preamble to the proposed rule contended that the terms "positive" and "repeatedly positive" should not be used with regard to HIV antibody test results because of the frequency of inconsistent and discrepant results using currently available test kits. One of the comments recommended that the terms "repeatably reactive" and "confirmed" should be used in place of "positive" and "repeatably positive," respectively.

FDA agrees that the term "repeatably reactive" should be used in place of "positive" in the regulations. The term "repeatably positive" was used only in the preamble of the proposed rule and not in the regulations; therefore, no further action is necessary with respect to that phrase. The agency is requiring that blood reacting by two independent tests, i.e., that is repeatably reactive, shall not be used for transfusion or the manufacture of a product except upon specific FDA approval. Accordingly, FDA is amending § 610.45(c)(1) to require that blood, plasma, or other blood components that are repeatably reactive to a test for antibody to HIV shall not be shipped or used in the manufacture of any product, except as provided in the regulations. (See also FDA's response to the next comment.)

C. Testing Requirements and Procedures

7. Twelve comments on proposed § 610.45(c) asked that the regulations provide for use of a means of determining false-positive tests for antibody to HIV so that persons testing false-positive are not deferred permanently from donating blood. Many of the comments cited cases of blood samples that initially were repeatably reactive and then did not react by other licensed tests, Western blot, or tests using blood samples obtained subsequent to the first, repeatably reactive, sample. In other cases, the repeatably reactive test results were shown to be false-positive because of human leukocyte locus A (HLA) antibody cross-reactivity. Some comments stated that the responsible physician at the blood establishment should have the discretion of deciding whether such donors could be reinstated in the donor pool. Some comments recommended that blood be considered positive for antibody to HIV only when confirmed by Western blot or other appropriate, more specific tests. Other comments recommended that the deferral for donors testing positive should not be permanent because methods may soon be developed to identify false positive tests and those donors whose blood sample tested false-positive should be allowed to return to routine blood donation.

FDA agrees in part with the comments. As demonstrated by the comments, blood establishments have studied a variety of methods for identifying those blood samples that test repeatably reactive for reasons other than exposure to the HIV virus, i.e., blood samples testing falsely-positive. To be considered for use in assuring the safety of blood products, any such test system must be shown by appropriate trials to identify only falsely-positive tests while assuring that blood containing antibody to HIV is removed from the blood supply.

FDA has now approved for licensure a standardized test system that is appropriate for use as a more specific test for identifying falsely-positive test results. By a letter of April 29, 1987, to all registered blood establishments, FDA issued recommendations for the use of the newly licensed Western blot test as part of a testing protocol to clarify the status of donors with a reactive test for antibody to HIV. Other test systems may be approved for similar purposes in the future, and FDA will continue to advise blood establishments of the conditions under which these test systems may be used. FDA agrees that the regulations should provide for the use of such test systems upon FDA approval. Accordingly, FDA is adding under § 610.45(c)(2)(i) a provision that the restrictions on use of blood and blood components that test repeatably reactive or from a donor known to be repeatably reactive do not apply when the blood or donor is shown to be negative for antibody to HIV or otherwise free from HIV infection by a method or process approved for such purpose by FDA. As FDA approves an appropriate test or process, FDA will advise blood establishments of the circumstances and conditions under which the newly approved method or process may be used. This amendment will allow blood establishments to adopt immediately newly approved methodologies for detecting false-positive reactions to the test for antibody to HIV while assuring the continued safety of the blood supply. Proposed § 610.45(c)(2)(i), (ii), and (iii) are redesignated in the final rule as § 610.45(c)(2)(ii), (iii), and (iv), respectively.

8. One comment from the New York State Department of Health urged that donor notification be made only if the initial screening tests have been confirmed by a more specific assay, such as the Western blot technique. The comment advised that New York State regulations prohibit donor notification without such verification. Another comment asked that FDA strongly endorse the use of Western blot as a confirmatory test before notification of a donor whose blood was repeatably reactive to the test for antibody to HIV.

Currently, blood establishments are using any of several donor notification procedures. For example, many establishments perform additional testing, including testing by the Western blot technique, before notifying a donor. Other establishments notify a donor when the blood sample tests repeatably reactive upon initial testing for antibody for HIV; however, these establishments inform the donor that the test results do not mean that the person will get AIDS and, indeed, that additional testing will be necessary to determine whether the person has even been exposed to the viral agent of AIDS. Such notification also provides the donor guidance for further medical evaluation and counseling.

The requirements in this rulemaking are to assure that blood and blood components containing antibody to HIV are not used for purposes that may be hazardous to the public health. FDA

does not believe it necessary to include requirements at this time concerning the notification of donors testing repeatably reactive for antibody to HIV. The Public Health Service has issued recommendations regarding appropriate procedures for notification of any person testing repeatably reactive to a test for antibody to HIV (*Morbidity and Mortality Weekly Report*, March 14, 1986; 35:152–155). As additional information becomes available, the Public Health Service will issue revised notification recommendations, if appropriate.

9. One comment on proposed § 610.45(a) asked that the regulations clearly prohibit the human use of blood and blood components before the completion of testing for antibody to HIV.

FDA does not agree that the use of incompletely tested blood should be prohibited in all circumstances. Blood and blood components are frequently life-saving products. On occasion, a physician may determine it necessary in a life-threatening situation to transfuse blood and blood components for which testing has not been completed because adequate supplies of completely tested blood of suitable blood type are not immediately available. Except in such emergency situations or in other specific circumstances subject to the approval of FDA, the regulations will effectively prohibit the use of blood and blood products until testing is completed.

10. One comment on proposed § 610.45 (a) and (c) asked that blood labeled "For Autologous Use Only" be specifically exempted from testing requirements and restrictions on use because the testing of an autologous unit for antibody to HIV does not increase the safety of that unit for the donor/recipient.

At many blood establishments, blood may be collected from a person for later infusion into the same person, i.e., for autologous use. In some cases, a blood establishment may elect to use for other purposes blood originally intended for autologous use, but found to be unnecessary for the treatment of the donor/patient. The blood establishment may use such blood or components for other purposes only if the donor was found to meet all suitability requirements related to product safety and the blood has been tested and found suitable by all required tests, including a test for antibody to HIV. When a blood establishment collects blood exclusively for autologous use, the blood or any components of the blood must be prominently and permanently labeled in place of the blood group label as being for autologous use only as required by 21 CFR 606.121(i)(4) of the blood labeling regulations. Blood so labeled is not suitable for homologous use.

FDA agrees that under certain conditions it would be unnecessary to test blood used exclusively for autologous infusion for antibody to HIV because there is no risk of disease transmission to the donor/recipient through such infusion. In the proposed regulations, § 610.45(a) provided that human blood and blood components may be issued before the results of the test for antibody to HIV are available only in dire emergencies or as otherwise approved in writing by FDA. FDA has decided that the proposed regulation should be revised to allow as well for exceptions from the requirement to test each donation. Accordingly, FDA is amending § 610.45(a)(1) (proposed § 610.45(a)) in the final rule to provide that each donation of human blood or blood components intended for use in preparing a product shall be tested for antibody to HIV, except as otherwise approved in writing by FDA. The final regulations will continue to provide that, when the test is required, human blood and blood components may be issued before the results of the test for antibody to HIV are available only in dire emergencies or as otherwise approved by FDA.

The Director, Office of Biologics Research and Review intends to send a written memorandum to blood establishments setting forth the conditions for an exception to the HIV testing requirement for blood or blood components for autologous use only. Therefore, individual establishments need not write to the agency requesting specific exceptions from the HIV testing requirement for products for autologous use at this time. FDA emphasizes that it is the responsibility of each blood establishment to assure that its procedures regarding blood for autologous use protect the health of the patient and to assure that the blood or its components are not later accidentally or otherwise diverted for other uses. For example, blood establishments should take particular care to have adequate procedures to assure that plasma from blood intended for autologous use that does not meet FDA requirements is not separated, labeled, and sold for use in further manufacturing.

11. One comment requested that special provisions be made for cytapheresis products collected from persons who donate frequently. The comment noted that FDA's current policy concerning the collection of Platelets, Pheresis by automated apheresis methods provides for testing of donor blood for syphilis and hepatitis B surface antigen at the beginning of a 30-day period and to require more frequent testing for antibody to HIV would increase costs unnecessarily and delay delivery of the products to the patient.

FDA agrees with the comment. FDA is approving special programs of intensive plateletapheresis by which platelets are collected repeatedly from a single donor, such as a family member of the intended recipient, for transfusion into a single recipient. Platelets, Pheresis may be collected in this manner as often as every 48 hours for a period not to exceed 30 days. The donor's health is evaluated carefully at each visit; however, FDA requires that the donor's blood be tested for syphilis and hepatitis B surface antigen only at the beginning of the 30-day donation period. Likewise, FDA agrees that the donor's blood needs to be tested for antibody to HIV only at the beginning of the 30-day donation period. FDA believes this policy will eliminate unnecessary testing without jeopardizing the safety of the platelets administered to the recipient.

As discussed in comment 10, proposed § 610.45(a) is now being revised to allow for exceptions from the requirement to test each donation. As with the exception regarding products for autologous use only, the exception regarding single donor intensive plateletpheresis will be described in more detail in a memorandum from the Director, Office of Biologics Research and Review to blood establishments.

D. Product Labeling, Storage, and Restrictions on Use

12. One comment asked whether the requirements of current § 606.40(a)(4) would be fulfilled by storing blood that tests initially reactive for HIV antibody in the general quarantine area for untested blood until the completion of repeat testing. The comment agreed, however, that repeatably reactive units should be stored in a separate quarantine area reserved for biohazardous materials.

FDA finds that the storage conditions described in the comment, i.e., storage conditions in a general quarantine area for untested blood do not fulfill the requirements of current § 606.40(a)(4). Section 606.40(a)(4) requires that adequate space be available to provide for the quarantine storage of blood components in a designated location pending repetition of those tests that initially give questionable serological results. In compliance with § 606.40(a)(4), many small blood establishments designate a shelf or secondary storage container in a blood

storage refrigerator as being reserved for quarantine of blood and blood components with questionable test results. Blood with questionable test results must be isolated from untested blood at the time of labeling to assure that potentially hazardous units are not released inadvertently for transfusion when the testing of the other blood units is completed.

13. One comment on proposed § 610.45(a) asked that the regulations be amended to require that the labeling of blood and blood components indicate when testing for antibody to HIV has not been completed.

FDA agrees with the comment. In the **Federal Register** of August 30, 1985 (50 FR 35458), FDA issued a final rule revising the labeling requirements for blood and blood components intended for transfusion. The regulations became effective on September 2, 1986. Included in 21 CFR 606.121(h) is a requirement that the labels of blood or blood components shipped in an emergency, prior to the completion of testing, identify which required tests have been completed and which have not been completed before shipment. As provided in § 610.45(a)(1) (proposed § 610.45(a)), blood may be issued in a dire emergency before testing for antibody to HIV is completed. FDA is amending § 606.121(h) in this final rule to include reference to the test for antibody to HIV as one of the required tests for which the label of blood shipped in an emergency must identify the testing status.

14. Two comments asked that an exception be provided in § 610.45(c)(2) to permit the use in certain biological products of blood components known or suspected to be repeatably reactive for antibody to HIV. Specifically, the comments asked that the regulations provide for the use of such blood components in manufacturing Hepatitis B Vaccine or for manufacturing various in vitro diagnostic reagents derived from the plasma of persons with hemophilia A or B.

Under § 610.45(c)(1) of the proposed rule, blood and blood components testing repeatably reactive for antibody to HIV could be shipped or used, with limited exceptions, only for purposes and under conditions approved in writing by FDA. FDA continues to believe that this restriction on the use of such blood and blood components is necessary to assure that the agency can adequately monitor the handling, labeling, and use of these potentially hazardous materials. Accordingly, FDA does not believe that the regulations should be amended to specify the products for which repeatably reactive human blood source materials may be used in their manufacture. As provided in § 610.45(c)(1), manufacturers of products such as those mentioned in the comments may apply individually to FDA for permission to ship and use for manufacture blood and blood components that are repeatably reactive for antibody to HIV.

15. One comment by a manufacturer of blood derivatives asked whether plasma collected before the test for antibody to HIV became available (April 1985) could be used for the manufacture of albumin and immunoglobulin products. The comment expressed the belief that the manufacturing process renders these products safe for parenteral use. The comment estimated that it would take 4 years to completely dispose of all in-process lots of its products that are prepared from source materials that were not tested for antibody to HIV.

FDA advises that upon the effective date of this rule, untested plasma may not be used routinely for the manufacture of any product, including albumin and immunoglobulin products. Blood establishments have been testing blood and plasma for antibody to HIV since early 1985; therefore, supplies of untested plasma are largely depleted and supplies of tested plasma are adequate to meet routine needs. FDA recognizes that some untested plasma intended for special purposes, such as plasma containing a rare antibody that is used in the manufacture of in vitro diagnostic reagents, may still be stockpiled awaiting further manufacture. FDA also recognizes that untested plasma may be used safely in the manufacture of some biological products, provided the manufacturer takes appropriate precautions and the agency monitors the handling, labeling, and use of these potentially hazardous materials. As provided under § 610.45(a) of the final rule, a manufacturer may apply to FDA for permission to use untested plasma for further manufacture.

III. Economic, Environmental, and Paperwork Considerations

The agency has determined under 21 CFR 25.24(c)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic impact of this final rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as specified in the Regulatory Flexibility Act (Pub. L. 96–354).

FDA concludes that a little over 2,000 establishments, about half of which are small businesses, will be affected by the final rule. FDA estimated that the final rule will require the performance of about 24 million serologic tests for HIV antibody each year: 14 million tests on units of blood and 10 million tests on units of Source Plasma. The nation's blood banks and plasmapheresis centers, large and small, are now performing the HIV antibody test voluntarily.

FDA cannot at this time quantify the benefits of the rule, which are related primarily to the decrease in the risk of transmitting AIDS by transfusion. Much of this benefit would take place even in the absence of these regulations, because the blood industry has instituted HIV antibody testing without the regulations. The main benefits of the regulations are to standardize industry practices, thereby providing a more complete and timely assurance of the continued safety of the nation's blood supply.

The anticipated costs are insufficient to warrant designation of this final rule as a major rule under any of the criteria specified under section 1(b) of Executive Order 12291 or to require a regulatory flexibility analysis. Accordingly, under section 605(b) of the Regulatory Flexibility Act, the Commissioner of Food and Drugs certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch.

Sections 640.2(f) and 640.72(a)(2) of this final rule contain collection of information requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0227.

In addition, the final rule continues current collection of information requirements already submitted to OMB under section 3507 of the Paperwork Reduction Act (21 CFR 606.100 and 606.160, OMB control number 0910–0116).

List of Subjects

21 CFR Part 606

Blood, Laboratories.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Administrative Procedure Act, 21 CFR Parts 606, 610, and 640 are amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR Part 606 is revised to read as follows:

Authority: Secs. 201, 501, 502, 505, 510, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended by 76 Stat. 780, 1052–1053 as amended, 1055–1056 as amended, 76 Stat. 794 as amended, and sec. 301 of Pub. L. 87–781 (21 U.S.C. 321, 351, 352, 355, 360 and note, 371), the Public Health Service Act (secs. 351 and 361, 58 Stat. 702 and 703 as amended (42 U.S.C. 262 and 264)), and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243, as amended (5 U.S.C. 553, 702, 703, 704)); 21 CFR 5.10 and 5.11.

2. In § 606.121 by revising paragraph (h) to read as follows:

§ 606.121 Container label.

* * * * *

(h) The following additional information shall appear on the label for blood or blood components shipped in an emergency, prior to completion of required tests, in accordance with § 640.2(f) of this chapter:

(1) The statement: "FOR EMERGENCY USE ONLY BY _____."

(2) Results of any tests prescribed under §§ 610.40, 610.45, and 640.5 (a), (b), or (c) of this chapter completed before shipment.

(3) Indication of any tests prescribed under §§ 610.40, 610.45, and 640.5 (a), (b), or (c) of this chapter and not completed before shipment.

* * * * *

3. In § 606.122 by revising paragraph (e) to read as follows:

§ 606.122 Instruction circular.

* * * * *

(e) Statements that the product was prepared from blood that was negative when tested for antibody to Human Immunodeficiency Virus (HIV) and nonreactive for hepatitis B surface antigen by FDA required tests and nonreactive when tested for syphilis by a serologic test for syphilis (STS).

* * * * *

PART 610—GENERAL BIOLOGICAL PRODUCT STANDARDS

4. The authority citation for 21 CFR Part 610 is revised to read as follows:

Authority: Secs. 201, 501, 502, 505, 510, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended by 76 Stat. 780, 1052–1053 as amended, 1055–1056 as amended, 76 Stat. 794 as amended, and sec. 301 of Pub. L. 87–781 (21 U.S.C. 321, 351, 352, 355, 360 and note, 371), the Public Health Service Act (secs. 351 and 361, 58 Stat. 702 and 703 as amended (42 U.S.C. 262 and 264)), and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243, as amended (5 U.S.C. 553, 702, 703, 704)); 21 CFR 5.10 and 5.11.

5. By adding § 610.45, to read as follows:

§ 610.45 Human Immunodeficiency Virus (HIV) requirements.

(a) *Testing requirements.* (1) Each donation of human blood or blood components intended for use in preparing a product shall be tested for antibody to HIV by a test approved for such use by FDA, except as otherwise approved in writing by FDA. When the test for antibody to HIV is required, blood and blood products may be issued before the results of the test for antibody to HIV are available only in dire emergency situations or as otherwise approved in writing by FDA and, provided the test required by this paragraph is performed as soon as possible after issuance of the blood or blood product.

(2) Tests approved by FDA for the screening of blood and blood components for evidence of HIV may only be used in place of a test for antibody to HIV to satisfy the requirements of this section and related sections if so specified by FDA.

(b) *Testing responsibility.* The test for antibody to HIV shall be performed by the collection facility, by personnel of an establishment licensed to manufacture blood or blood derivatives under section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), or by a clinical laboratory which meets the standards of the Clinical Laboratory Improvement Act of 1967 (CLIA) (42 U.S.C. 263a), provided the establishment or clinical laboratory is qualified to perform the test.

(c) *Restrictions on use.* (1) Blood, plasma, or other blood components that are repeatably reactive to a test for antibody to HIV or that were collected from a donor whose blood is known to be repeatably reactive to a test for antibody to HIV, shall not be shipped or used to prepare any product, including products not subject to licensure; except that such blood and blood components shall be shipped or used only for purposes and under conditions specifically approved in writing by FDA.

(2) The restrictions on use contained in this paragraph shall not apply in the following cases:

(i) Blood and blood components testing repeatably reactive or from a donor whose blood is known to be repeatably reactive that are shown to be negative for evidence of HIV infection by a method or process approved for such use by FDA;

(ii) The distribution of blood, plasma, or serum samples, except when intended for use in the manufacture of a product;

(iii) The in-house use of blood and blood components for research purposes; or

(iv) The distribution of blood and blood components for research purposes, if not distributed by sale, barter, or exchange.

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

6. The authority citation for 21 CFR Part 640 is revised to read as follows:

Authority: Secs. 201, 501, 502, 505, 510, 701, 52 Stat. 1040–1042 as amended, 1049–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948, 76 Stat. 794–795 as amended (21 U.S.C. 321, 351, 352, 355, 360, 371) and the Public Health Service Act (sec. 351, 361, 58 Stat. 702 as amended (42 U.S.C. 262, 264)) and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 702, 703, 704)); 21 CFR 5.10 and 5.11.

7. In § 640.2 by revising paragraph (f) and by adding a parenthetical statement at the end of the section, to read as follows:

§ 640.2 General requirements.

* * * * *

(f) *Issue prior to determination of test results.* Notwithstanding the provisions of § 610.1 of this chapter, blood may be issued by the manufacturer on the request of a physician, hospital, or other medical facility before results of all tests prescribed in § 640.5, the test for hepatitis B surface antigen prescribed in § 610.40(a) of this chapter, and a test for antibody to Human Immunodeficiency Virus (HIV) prescribed in § 610.45(a) of this chapter have been completed, where such issue is essential to allow time for transportation to ensure arrival of the blood by the time it is needed for transfusion: *Provided,* That (1) the blood is shipped directly to such physician or medical facility, (2) the records of the manufacturer contain a full explanation of the need for such issue, and (3) the label on each container of such blood

bears the information required by § 606.121(h) of this chapter.

(Collection of information requirements approved by the Office of Management and Budget under number 0910-0227.)

8. In § 640.5 by adding paragraph (f), to read as follows:

§ 640.5 Testing the blood.

* * * * *

(f) *Test for antibody to HIV.* Whole Blood shall be tested for antibody to HIV as prescribed in § 610.45 of this chapter.

9. By revising § 640.14, to read as follows:

§ 640.14 Testing the blood.

Blood from which Red Blood Cells are prepared shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a), (b), and (c).

10. In § 640.23 by revising paragraph (a), to read as follows:

§ 640.23 Testing the blood.

(a) Blood from which plasma is separated for the preparation of Platelets shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a), (b), and (c).

* * * * *

11. In § 640.33 by revising paragraph (a), to read as follows:

§ 640.33 Testing the blood.

(a) Blood from which plasma is separated shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a), (b), and (c).

* * * * *

12. In § 640.53 by revising paragraph (a), to read as follows:

§ 640.53 Testing the blood.

(a) Blood from which plasma is separated for the preparation of Cryoprecipitated AHF shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a), (b), and (c).

* * * * *

13. By revising § 640.67, to read as follows:

§ 640.67 Laboratory tests.

(a) *Hepatitis B surface antigen.* Each unit of Source Plasma shall be nonreactive to a test for hepatitis B surface antigen as prescribed in §§ 610.40 and 610.41 of this chapter, except insofar as permitted in § 610.40(d) (2) and (3) of this chapter.

(b) *Antibody to HIV.* Each unit of Source Plasma shall be negative by a test for antibody to HIV as prescribed in § 610.45 of this chapter, except as provided in § 610.45(c) of this chapter.

14. In § 640.70 by adding paragraph (a)(11), to read as follows:

§ 640.70 Labeling.

(a) * * *

(11) The statement "Negative by a test for antibody to HIV", or equivalent statement.

* * * * *

15. In § 640.71 by adding paragraph (a)(4), to read as follows:

§ 640.71 Manufacturing responsibility.

(a) * * *

(4) A test for antibody to HIV.

* * * * *

16. In § 640.72 by revising paragraph (a)(2) and by adding a parenthetical statement at the end of the section, to read as follows:

§ 640.72 Records.

(a) * * *

(2) For each donor, a separate and complete record of all initial and periodic examinations, tests, laboratory data, interviews, etc., undertaken pursuant to §§ 640.63, 640.65, 640.66, and 640.67, except that negative test results for hepatitis B surface antigen, negative test results for antibody to HIV, and the volume or weight of plasma withdrawn from a donor need not be kept on the individual donor record: *Provided,* That such information is maintained on the premises of the plasmapheresis center where the donor's plasma has been collected.

* * * * *

(Collection of information requirements approved by the Office of Management and Budget under number 0910-0227.)

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary for Health and Human Services.

Dated: December 7, 1987.

[FR Doc. 88-60 Filed 1-4-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8171]

Income Taxes; Treatment of Salvage and Reinsurance Under Section 832 (b)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the treatment of salvage and reinsurance in determining the paid and unpaid losses of property and casualty insurance companies. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register.** The temporary regulations are issued because the current treatment of salvage and reinsurance does not result in an accurate reflection of income for federal tax purposes. The regulations affect insurance companies taxable under section 831 (a). The Service will issue guidance making it clear that the principles of these regulations also apply to the treatment of salvage and reinsurance in determining a life insurance company's paid and unpaid losses on contracts other than life insurance contracts. See sections 811 (a), 807 (c), and 816 (c) of the Internal Revenue Code of 1986 and the regulations thereunder.

DATES: The regulations are effective as of January 1, 1988, and apply to taxable years beginning after December 31, 1987.

FOR FURTHER INFORMATION CONTACT: William L. Blagg of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T, (202) 566-3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) to provide rules under section 832 (b)(5) of the Internal Revenue Code of 1986.

Explanation of Provisions

Under section 832 (b) the gross income of a property and casualty insurance company includes its underwriting income. Underwriting income means premiums earned on insurance contracts during the taxable year less losses incurred and expenses incurred. Section 832 (b) (5) provides that losses incurred are generally computed by deducting any increase in salvage and reinsurance recoverable from paid losses, and to that result adding any increase in unpaid losses. (The Tax Reform Act of 1986 provides for the discounting of unpaid losses to reflect the time value of money. The discounting of unpaid losses is expected to be the subject of another regulation project. That project is expected to address the proper treatment, under section 846 (g)(2), of salvage and reinsurance attributable to unpaid losses, where such amounts are not taken into account in determining the unpaid losses shown in the annual statement filed by the taxpayer, and

hence are not reflected in the taxpayer's "undiscounted unpaid losses," as defined in section 846 (b) (1)).

Although the statute clearly requires that paid losses be adjusted to take into account salvage recoverable (i.e., salvage not reduced to cash or cash equivalents), this adjustment generally has not been made. In 1947, the Internal Revenue Service promulgated regulations under section 832 that provided for the exclusion from salvage recoverable of an item if any state in which the taxpayer transacted business prohibited the taxpayer from reporting such an item for annual statement purposes. Several states have rules prohibiting the reporting of any salvage recoverable. These rules reflect the generally conservative nature of state reporting measures, which are designed primarily to ensure the solvency of insurance companies. After the 1947 regulations were issued, many insurance companies began transacting business in states that prohibited the reporting of salvage recoverable. There remained, however, certain regional companies which did not transact business in such states. These companies were required to take salvage recoverable into account. Despite this disparity in treatment, the exclusion of salvage recoverable was upheld in *Continental Insurance Co. v. United States*, 474 F.2d 661 (Ct. C1. 1973).

The exclusion of salvage recoverable, while consistent with state regulatory ends, does not result in an accurate reflection of income for federal tax purposes. Those purposes are best served by a close matching of income and expenses. The temporary regulations, therefore, amend § 1.832–4 (c) to require that paid losses be adjusted by all salvage recoverable attributable to such paid losses, regardless of how the salvage recoverable is reported for annual statement purposes.

Section 1.832–4 (b) of the regulations provides that the taxpayer must establish "that the part of the deduction for 'losses incurred' which represents unpaid losses at the close of the taxable year comprises only actual unpaid losses stated in amounts which, based upon the facts in each case and the company's experience with similar cases, can be said to represent a fair and reasonable estimate of the amount the company will be required to pay." The temporary regulations amend § 1.832–4 (b) of the regulations to clarify that, in making a "fair and reasonable estimate of the amount the company will be required to pay," estimated recoveries on account of salvage and reinsurance attributable to unpaid losses must be taken into account.

Thus, the temporary regulations provide that salvage and reinsurance recoverable attributable to paid losses must be taken into account under section 832 (b) (5) (A) (i) as an adjustment to paid losses. Estimated recoveries on account of salvage and reinsurance attributable to unpaid losses must be taken into account in calculating the reserve for unpaid losses under section 832 (b) (5) (A) (ii).

In addition, the temporary regulations address the adjustments that must be made if the temporary regulations require an insurance company to change its method of accounting for salvage and reinsurance. The temporary regulations provide that the fresh start of section 1023 (e) of the Tax Reform Act of 1986 is not applicable to such a change in accounting method.

Finally, the temporary regulations make explicit that the term "salvage" includes subrogation claims. The temporary regulations do not thereby change the law concerning the meaning of salvage (as illustrated by *Continental Insurance Co. v. United States*, 474 F.2d 661 (Ct. C1. 1973)), and no inference should be drawn with respect to any section of the Internal Revenue Code or the regulations thereunder that any change is intended.

Special Analyses

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

Drafting Information

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

List of Subjects in 26 CFR 1.801–1 Through 1.832–6

Income taxes, Insurance companies.

Amendments to the Regulations

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

PART 1—[AMENDED]

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

Authority: 26 U.S.C. 7805.

Par. 2. Section 1.832–4 is redesignated as § 1.832–4T and amended by revising the heading, adding a new sentence at the end of paragraph (a)(5), revising paragraphs (b) and (c), and adding paragraphs (d) and (e) to read as follows:

§ 1.832-4T Gross income (temporary).

(a) * * *

(5) * * * See paragraph (b) of this section for rules relating to the treatment of salvage and reinsurance in determining unpaid losses.

(b) Every insurance company to which this section applies must be prepared to establish to the satisfaction of the district director that the part of the deduction for "losses incurred" which represents unpaid losses at the close of the taxable year comprises only actual unpaid losses stated in amounts which, based upon the facts in each case and the company's experience with similiar cases, represent a fair and reasonable estimate of the amount the company will be required to pay. Estimated recoveries on account of salvage and reinsurance attributable to unpaid losses must be taken into account in the computation of unpaid losses. The amounts of such expected recoveries should be estimated based upon the facts in each case and the company's experience with similar cases. Amounts included in, or added to, the estimates of unpaid losses which, in the opinion of the district director, are in excess of the actual liability determined as provided in the preceding sentences will be disallowed as a deduction. The district director may require any such insurance company to submit such detailed information with respect to its actual experience as is deemed necessary to establish the reasonableness of the deduction for "losses incurred."

(c) That part of the deduction for "losses incurred" which represents an adjustment to losses paid for salvage and reinsurance recoverable shall include all salvage in course of liquidation, and all reinsurance in process of collection not otherwise taken into account as a reduction of losses paid, outstanding at the end of the taxable year. Salvage in course of liquidation includes all property (other than cash or cash equivalents), real or

personal, tangible or intangible. Such salvage in course of liquidation shall be taken into account to the extent of the value thereof at the end of the taxable year as determined from a fair and reasonable estimate based upon either the facts in each case or the company's experience with similar cases. Cash or cash equivalents received during the taxable year with respect to items of salvage or reinsurance shall reduce losses paid during such taxable year. For purposes of this section the term "salvage" includes subrogation claims.

(d)(1) The treatment of salvage and reinsurance is a method of accounting. Every insurance company to which this section applies that did not treat salvage and reinsurance as provided in this section for the last taxable year beginning before January 1, 1988, must change its method of accounting with respect to salvage and reinsurance in the first taxable year beginning after December 31, 1987. The change in method of accounting will result in a section 481(a) adjustment. The fresh start provision of section 1023(e) of the Tax Reform Act of 1986 does not apply to the change in method of accounting required by this paragraph (d)(1).

(2) In the case of any insurance company required by paragraph (d)(1) of this section to change its method of accounting for any taxable year, such change shall be treated as initiated by the taxpayer and made with the consent of the Commissioner.

(3) Any insurance company required to change its method of accounting under paragraph (d)(1) of this section shall take the required adjustment into account as provided in applicable administrative procedures.

(e) This section is effective for taxable years beginning after December 31, 1987. In computing unpaid losses for taxable years beginning before January 1, 1988, an insurance company to which this section applies is not required to take into account estimated recoveries on account of salvage attributable to unpaid losses. In addition, in computing paid losses for such taxable years, an insurance company to which this section applies is not required to take into account salvage recoverable if during such taxable years the inclusion of such salvage was prohibited by the laws of a state in which the company transacted business.

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

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: December 22, 1987.

Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 87-30193 Filed 12-30-87; 1:51 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-87-37]

Drawbridge Operation Regulations; Okeechobee Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Martin County, the Coast Guard is changing regulations governing the Evans Crary drawbridge in Martin County by permitting the number of openings to be limited during certain periods. This change is being made because of complaints about highway traffic delays. This action will accommodate the current needs of vehicular traffic and still provide for reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on February 4, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, telephone (305) 536-4103.

SUPPLEMENTARY INFORMATION: On October 2, 1987, the Coast Guard published proposed rule (52 FR 36961) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated October 16, 1987. In each notice, interested persons were given until November 16, 1987, to submit comments.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

The Coast Guard's notice of proposed rulemaking solicited comments on a proposal to change the operating regulations of the Evans Crary bridge and the Roosevelt bridge. Over 100 comments were received concerning the proposed rule change for the Roosevelt bridge and that matter is being witheld for further study. 60 of these comments were generally in support of the proposed regulations for both bridges including 2 petitions with 61 signatures. Many commenters complained about vessels which request openings merely to clear outriggers and antennae. The requirement to lower these appurtenances is contained in 33 CFR 117.11. Several commenters asked that signs stating the bridge opening times be placed along both the waterway and the highway. Waterway signs are addressed by 33 CFR 117.55. Posting of highway signs is not within the Coast Guard's jurisdiction, but the suggestion will be passed to the Florida Department of Transportation. One commentor expressed concern for movement of emergency vehicles when the bridge is open for navigation. This is addressed in 33 CFR 117.31. Some commenters suggested that a limit be placed on the number of vessels allowed to pass through an open bridge to avoid extended openings. This is not considered a safe navigational practice. 33 CFR 117.9 addresses unnecessary delays in the opening and closure of the draw. Several commenters asked that the regulations be implemented year-round. Available highway traffic and bridge opening data do not support the need for year-round regulations. No objections were received from navigation interests; however 1 commenter stated the regulations should be temporary, contingent on replacement of the drawbridge by a high level fixed bridge within 2 years. The Coast Guard offers no comment on this proposal since replacement of the bridge goes beyond the scope of these regulations. After careful consideration of all comments, the Coast Guard has determined the final rule for the Evans Crary bridge will be unchanged from the proposed rule published on October 2, 1987.

Economic Assessment and Certification

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

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

economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.317(b) is revised to read as follows:

§ 117.317 Okeechobee Waterway

* * * * *

(b) *Evans Crary (SR A1A) bridge, mile 3.4 at Stuart.* The draw shall open on signal; except that from December 1 through May 1, from 7 a.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need open only on the hour and half-hour. On Saturdays, Sundays, and federal holidays, December 1 through May 1, from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. Exempt vessels shall be passed at any time.

* * * * *

Dated: December 22, 1987.

M.J. O'Brien,

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

[FR Doc. 88–69 Filed 1–4–88; 8:45 am]

BILLING CODE 4910–14–M

AMERICAN BATTLE MONUMENTS COMMISSION

36 CFR Part 404

Regulation Implementing the Freedom of Information Act; Uniform Fee Schedule and Administrative Guidelines

AGENCY: American Battle Monuments Commission.

ACTION: Final rule.

SUMMARY: The American Battle Monuments Commission has changed its procedures for responding to public requests for access to records or information maintained by the Commission. These regulations implement and reflect recent amendments to the Freedom of Information Act.

EFFECTIVE DATE: January 20, 1988.

FOR FURTHER INFORMATION CONTACT: Colonel William E. Ryan, Jr., Freedom of Information Officer, American Battle Monuments Commission or Martha Sell, Freedom of Information Act Representative, Room 5127, Casimir Pulaski Building, 20 Massachusetts Avenue NW., Washington, DC 20314 (202) 272–0537.

SUPPLEMENTARY INFORMATION: The American Battle Monuments Commission has revised 36 CFR Part 404, its regulations for responding to public requests for access to records or information under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These regulations implement and reflect recent amendments to the FOIA made by the Freedom of Information Act of 1986, Pub. L. 99–570, 1801–1804. They also reflect guidelines issued by the Office of Management and Budget by 52 FR 10012, March 27, 1987. The regulations also update and amplify the Commission's current regulations.

List of Subjects in 36 CFR Part 404

Freedom of Information.

36 CFR Part 404 is revised to read as follows:

PART 404—PROCEDURES AND GUIDELINES FOR COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

Sec.

404.1 Purpose.
404.2 General policy.
404.3 Response to requests.
404.4 Denial of access.
404.5 Appeals.
404.6 Fees to be charged.
404.7 Assessment and collection of fees.
404.8 Categories of requesters.
404.9 Waiver of fees.
404.10 Maintenance of statistics.

Authority: 5 U.S.C. 552.

§ 404.1 Purpose.

These guidelines prescribe procedures to obtain information and records of the American Battle Monuments Commission under the Freedom of Information Act of 1986, 5 U.S.C. 552(a)(4)(A)(i). This act requires each agency to promulgate regulations that specify the schedule of fees for processing FOIA requests and the guidelines when fees may be waived. It applies only to records and information of the Commission which are in the Commission's custody.

§ 404.2 General policy.

Public requests for information from the records of the American Battle Monuments Commission should be sent to the Freedom of Information Representative, American Battle Monuments Commission, Room 5127, Casimir Pulaski Building, 20 Massachusetts Ave., NW., Washington, DC 20314. They may also be sent to its field offices at the addresses listed below:

(a) Officer-in-Charge, European Office, American Battle Monuments Commission, APO New York 09777.

(b) Officer-in-Charge, Mediterranean Office, American Battle Monuments Commission, APO New York 09794.

(c) Superintendent, Manila American Cemetery, FPO San Francisco 96528.

(d) Superintendent, Corozal American Cemetery, The American Battle Monuments Commission, Attn: AFZU–AG–CRB, Drawer #38, APO Miami, FL 34004–5000.

(e) Superintendent, Mexico City National Cemetery, American Battle Monuments Commission, c/o U.S. Embassy, Mexico, P.O. Box 3087, Laredo, TX 78044–3087.

§ 404.3 Response to requests.

(a) Except for records and information exempted from disclosure by 5 U.S.C. 552(a)(1), all records of the Commission or in its custody are available to any person who requests them.

(b) Requests for information from the public will be honored within ten working days unless the confidentiality of such information is protected by law, or when it is necessary to search and/or collect records in separate offices or another office of the Commission, which would usually require more than ten working days.

(c) Whenever information cannot be dispatched within ten work days after receipt of request, an interim reply will be sent informing the requester of the status of the request.

(d) The records of the ABMC may be examined and copied between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday under the supervision of the Freedom of Information representative.

§ 404.4 Denial of access.

(a) Letters denying confidential information will be dispatched within ten working days of receipt of the request and will be signed by one of the below listed personnel:

(1) Officer-in-Charge, ABMC European Office.

(2) Officer-in-Charge, ABMC Mediterranean Office.

(3) Directors, ABMC Washington Office.

(4) Secretary, ABMC.

(b) Letters denying access to information will:

(1) Provide the requester with the reason for denial,

(2) Inform the requester of his or her right to appeal the denial within 30 days.

(3) Give the name of the official to whom the appeal may be sent.

(c) If an unusual circumstance delays a decision concerning access to information, the requester will be informed of the delay within ten working days of the request's initial receipt. In no case will the decision be delayed more than 20 working days from initial receipt of the request.

(d) A copy of each denial of information will be furnished to the Secretary, ABMC at the time of its dispatch.

§ 404.5 Appeals.

(a) The Secretary is the appellate authority for all denials except those which he authors. The Chairman is the appellate authority for denials authored by the Secretary.

(b) The requester will be informed of the decision on his or her appeal within 20 working days after its receipt. If the denial is upheld, the requester will be advised that there are provisions for judicial review of such decisions under the Freedom of Information Act.

(c) In the event a court finds that the American Battle Monuments Commission has arbitrarily and capriciously withheld information from the public and a subsequent Office of Personnel Management investigation finds agency personnel responsible, these personnel will be subject to disciplinary action by the American Battle Monuments Commission.

§ 404.6 Fees to be charged.

While most information will be furnished promptly at no cost as a service to the general public, fees will be charged if the cost of search and duplication warrants. In those instances where ABMC deems it necessary to charge a fee, ABMC shall use the most efficient and least costly methods to comply with requests for documents, drawings, photographs, and any other materials made available under the FOIA. The Freedom of Information Representative shall charge the fees stated in paragraphs (a) through (g) of this section. The Freedom of Information Representative shall, however, waive the fees in the circumstances stated in § 404.9. The specific fees which ABMC shall charge the requester when so required by the FOIA are as follows:

(a) Manual searches of records. $9.00 per hour for clerical personnel; $15.00 per hour for supervisory personnel.

(b) Computer searches for records. Fees for searches of computerized records shall be the actual cost to the Commission but shall not exceed $12.00 per hour. This fee includes machine time and that of the operator and clerical personnel. The fee for computer printouts shall be $.40 per page. The word "page" refers to paper copies of standard computer size, which normally are 11 x 15 inches.

(c) Copying fee. The machine copy fee for each page up to 8½ x 14 shall be $.25 per page. Copying fees shall not be charged for the first 100 pages of copies unless the copies are requested for commercial purposes.

(d) $2.00 for each 8 x 10 inch black and white photograph.

(e) $3.00 for each 8 x 10 inch color photograph.

(f) $1.75 per cemetery booklet.

(g) $1.50 per lithograph.

§ 404.7 Assessment and collection of fees.

(a) *Assessment of fees.* (1) ABMC shall assess interest charges on an unpaid bill starting on the 31st day following the day on which the billing was dispatched. Once the fee has been received by ABMC, even if not processed, accrual of interest will cease. Interest will be at the rate prescribed in section 3717 of Title 31 of the United States Code and will accrue from the date billing is sent.

(2) *Charges for unsuccessful searches.* If ABMC estimates that charges for an unsuccessful search may exceed $10.00, it shall so inform the requester unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. Such notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet the requester's needs at a lower cost. Dispatch of such a notice shall temporarily suspend the ten day period for response by ABMC until a reply is received from the requester.

(3) *Aggregating requests.* Except for requests that are for a commercial use, ABMC shall not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When ABMC believes that a group of requesters are acting in concert and attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, ABMC shall aggregate any such requests and charge accordingly. One element to be considered is the time period in which the requests have been made. Before aggregating requests from more than one requester, ABMC must be reasonably certain that the requesters are acting specifically to avoid payment of fees. In no case shall ABMC aggregate multiple requests on unrelated subjects from one requester.

(4) *Advance payments.* ABMC shall not require payment for fees before work has commenced or continued on a request unless:

(i) ABMC estimates that the charges may exceed $25.00. In such an event, ABMC shall notify the requester of the estimated cost and may require an advance payment of an amount up to the full amount of estimated charges; or

(ii) A requester has previously failed to pay a fee within 30 days of the date of billing. In this event, ABMC shall require the requester to pay the full amount owed plus any applicable interest and make an advance payment of the full amount of the estimated fee before ABMC begins to process a new request or a pending request from that requester.

(iii) When ABMC acts under paragraphs (a)(4)(i) or (ii) of this section, the administrative time limits prescribed in § 404.3 will begin only after ABMC has received fee payments described above.

(5) *Form of payment.* Remittances shall be in the form of a personal check or bank draft drawn on any bank in the United States, a postal money order, or cash. Remittances shall be made payable to the American Battle Monuments Commission.

(6) ABMC will not defray cost sending records by special methods such as express mail or for transportation of personnel.

(b) *Restrictions on assessing fees.* With the exception of requesters seeking documents for commercial use, section (a)(4)(A)(iv) of the Freedom of Information Act, as amended, requires ABMC to provide the first 100 pages of duplication and the first two hours of search time without charge. ABMC shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. ABMC will not begin to assess fees until it has first provided the free search and reproduction authorized.

§ 404.8 Categories of requesters.

There are four categories of FOIA requesters: Commercial; educational

and noncommerical scientific institutions; representatives of the news media; and all others. The fees to be charges each of these categories of requesters are as follows:

(a) *Commerical.* When ABMC receives a request for documents for commerical use, it shall assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters are not entitled to two hours of free search time or 100 free pages of reproduction. ABMC shall recover the cost of searching for the records even if ultimately there is no disclosure of records. Requesters must provide a reasonable description of the records sought.

(b) *Educational and non-commerical scientific institutions.* ABMC shall provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, except there will be no charge for the first 100 pages of duplication. To be eligible for inclusion in this category, requesters must show that the request is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must provide a reasonable description of the records being sought;

(c) *Representatives of the news media.* ABMC shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, except there will be no charge for the first 100 pages. A request for records supporting the news-dissemination function of the requester shall not be considered commerical use. Requesters must provide a reasonable description of the records sought;

(d) *All other requesters.* ABMC shall charge requesters who do not fit into any of the above categories fees that recover the full reasonable costs of direct search and reproduction records responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Requesters must provide reasonable description of the records sought.

§ 404.9 Waiver of fees.

The Freedom of Information Representative shall waive all fees assessed under 404, if the following two conditions are satisfied: Disclosure of the information is in the public interest as it is likely to contribute significantly to public understanding of the operations or activities of the government; and disclosure is not primarily in the commercial interest of the requester. The Freedom of Information Representative shall afford the requester the opportunity to show that he satisfies these two conditions. Under the above standards should ABMC refuse to waive a request for information and the requester petition for a waiver, the senior Freedom of Information Representative will make the determination.

§ 404.10 Maintenance of statistics.

(a) The Freedom of Information Representative shall maintain record of:

(1) The total amount of fees collected by ABMC under this part;

(2) The number of denials of requests for records or information made under this part and the reason for each;

(3) The number of appeals from such denials, together with the results of such appeals, and the reasons for the action upon each appeal that results in a denial of information or documents;

(4) The name and title or position of each person responsible for each denial of records and the number of instances of each;

(5) The results of each proceeding conducted under 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action against the official or employee primarily responsible for improperly withholding records, or an explanation of why disciplinary action was not taken;

(6) A copy of every rule made by this agency affecting or implementing 5 U.S.C. 552;

(7) A copy of the fee schedule for copies of records and documents requested under this part; and

(8) All other information that indicates efforts to administer fully the letter and spirit of the Freedom of Information Act and the above rules.

(b) The Freedom of Information Act Representative shall annually, within 60 days following the close of each calendar year, prepare a report covering each of the categories of records to be maintained in accordance with the foregoing and submit the same to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress.

William E. Ryan, Jr.,

Colonel, AD, Freedom of Information Officer.

[FR Doc. 88-11 Filed 1-4-88; 8:45 am]

BILLING CODE 6120-01-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM-86-5A]

Recordation of Transfers and Other Documents

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulation.

SUMMARY: This notice is issued to advise the public that the Copyright Office of the Library of Congress is adopting a final regulation amending its regulations (37 CFR 201.4) implementing section 205 of the Copyright Act of 1976, title 17 U.S.C. The Office has decided to revise its requirement that, to be recordable, a reproduction of a signed document must be accompanied by a sworn certification signed by at least one of the persons who executed the document, or by an authorized representative of that person. Under the amended regulation, the required sworn certification need only be signed by a party to a document, or by an authorized representative of that person, regardless of whether the person actually signed the original document.

EFFECTIVE DATE: January 5, 1988.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone: (202) 287-8380.

SUPPLEMENTARY INFORMATION: Section 205(a) of title 17 U.S.C. provides for the recordation in the Copyright Office of any transfer of copyright ownership or other document pertaining to a copyright "if the document filed for recordation bears the actual signature of the person who executed it, or if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document." In implementing this provision, the Copyright Office adopted a regulation [37 CFR 201.4(c)(1)] requiring that "[a]ny sworn certification accompanying a reproduction shall be signed by at least one of the persons who executed the document, or by an authorized representative of that person." On October 2, 1986 (51 FR 35244), the Office published a notice of proposed rulemaking to advise the public that it was considering the adoption of an amendment to its regulations to permit the required sworn certification to be signed by a party to a document, regardless of whether that

person actually signed the original document. Interested parties were given until November 3, 1986, to comment on the proposed amendment. Comments were received from a representative of the Association of American Publishers, Inc. (AAP) and the law firm of Brylawski, Cleary & Leeds.

Both parties commenting on the proposed amendment supported the direction taken by the Copyright Office, but suggested that the proposed change did not go far enough. The law firm asserted that, where the original, signed document is unavailable, there are many people capable of certifying a reproduction as a true copy of the original. These persons would include an assignee or other successor in interest. The commentator urged that at least the successor in interest to one of the parties to the original signed document be permitted to sign the required certification. The AAP also suggested that the proposed amendment be expanded to cover successors in interest to one of the original parties. The AAP observed that the proposal, while an improvement on the existing requirement, could lead to difficulties "where recordation is sought by a successor to the publisher (e.g., in the case of a license, assignment, or business transfer of all or part of the subject matter covered by the document." The AAP noted that it is not uncommon that a party to the original document may no longer exist or be unavailable.

The Copyright Office, after reviewing the comments in light of the statutory purpose of recordation concludes that it should not record documents on the basis of copies attested to merely by a successor in interest. The Office is concerned about the authenticity of the recordations made pursuant to section 205, and has a responsibility to the public and the judicial system to guard against fraud. In cases where several transfers are interposed between the initial transaction and the point at which recordation is sought, the reliability of any bare assertion by a successor in interest is diminished. Finally since a successor in interest may submit for recordation the actual signed document under which such person is claiming an interest in the copyright, the Copyright Office is not persuaded of the need to revise its proposal.

The Office has been operating under its current regulation on recordation of transfers and other documents for nearly ten years. During this period, the Office has received few complaints concerning its certification requirement. The rule as proposed last year is an important departure from the existing procedure. The Office will closely monitor the experience under this new certification requirement to determine whether further amendment is required.

The Copyright Office is also making a minor technical amendment to 37 CFR 201.4(c)(1). The words "full-size" before facsimile reproductions are being deleted. The phrase is amended to read: "a legible photocopy or other legible facsimile reproduction of the signed document." This change is made in order to clarify the meaning of this requirement. "Full-size" refers to the Copyright Office policy of refusing to accept microform copies of documents for recordation, not whether a particular reproduction is the same size as the document reproduced. The Copyright Office is not in a position to make such a determination. It is sufficient for a reproduction of a document to be capable of being read for purposes of examining and cataloging and being reproduced in legible microform copies. As provided in subparagraph (3) of § 201.4(c), to be recordable, a document "must be legible and capable of being reproduced in legible microform copies." Reproductions of documents must also meet this requirement.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. This position is explained fully in the "Supplementary Information" accompanying the proposed rule. See 51 FR 35244. In the event it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to that Act, the Register of Copyrights has determined that this final regulation will have no significant impact on small businesses. In fact the amendment makes it easier to record documents.

List of Subjects in 37 CFR Part 201

Copyright, Recordation of copyright documents.

In consideration of the foregoing, the Copyright Office is amending Part 201 of 37 CFR, Chapter II.

PART 201—[AMENDED]

1. The authority citation for Part 201 continues to read as follows:

Authority: Copyright Act, Pub. L. 94–553; 90 Stat. 2541; 17 U.S.C. 702.

2. Section 201.4(c)(1) is revised to read as follows. The introduction to paragraph (c) is republished.

§ 201.4 Recordation of transfers and certain other documents.

* * * * *

(c) *Recordable documents.* Any transfer of copyright ownership (including any instrument of conveyance, or note or memorandum of the transfer), or any other document pertaining to a copyright, may be recorded in the Copyright Office if it is accompanied by the fee set forth in paragraph (d) of this section, and if the requirements of this paragraph with respect to signatures, completeness, and legibility are met.

(1) To be recordable, the document must bear the actual signature or signatures of the person or persons who executed it. Alternatively, the document may be recorded if it is a legible photocopy or other legible facsimile reproduction of the signed document, accompanied by a sworn certification or an official certification that the reproduction is a true copy of the signed document. Any sworn certification accompanying a reproduction shall be signed by at least one of the parties to the signed document, or by an authorized representative of that person.

* * * * *

Dated: December 14, 1987.

Ralph Oman,

Register of Copyrights.

James H. Billington,

Librarian of Congress.

[FR Doc. 88–45 Filed 1–4–88; 8:45 am]

BILLING CODE 1410-07-M

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37 CFR Part 201

[Docket No. RM 87–8]

Revocation of Import Statements

AGENCY: Copyright Office, Library of Congress.

ACTION: Revocation.

SUMMARY: The Copyright Office of the Library of Congress hereby revokes § 201.8 of 37 CFR. Section 201.8 was issued to implement section 601(b)(2) of the Copyright Act of 1976 which permitted importation into the United States of two thousand copies of certain copyrighted works not manufactured in the United States or Canada. In order to import the copies, the importer was required to present to the United States Customs Service an import statement issued by the Copyright Office. Regulation 201.8 established the requirements governing the issuance of such import statements. The

manufacturing clause of the copyright law expired on July 1, 1986, making § 201.8 obsolete.

EFFECTIVE DATE: January 5, 1988.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559; (202) 287–8380.

SUPPLEMENTARY INFORMATION: The manufacturing clause of the Copyright Act of 1976, title 17 of the United States Code, section 601, prohibited the importation into the United States of certain copyrighted works not manufactured in the United States or Canada. As an exception to that prohibition, an importer could import up to 2000 otherwise prohibited copies upon presentation to the United States Customs Service of an import statement issued by the Copyright Office. The 1976 version of the manufacturing clause, was originally scheduled to expire July 1, 1982. Public Law 97–215 extended the prohibition against importation of certain copyrighted works until July 1, 1986. The manufacturing clause has now expired making § 201.8 of Title 37 CFR obsolete and requiring its revocation.

PART 201—[AMENDED]

1. The authority citation for 37 CFR Part 201 continues to read as follows:

Authority: Sec. 702, 90 Stat. 2451, 17 U.S.C. 702, § 201.7 is also issued under 17 U.S.C. 408, 409, and 410; § 201.16 is also issued under 17 U.S.C. 116.

§ 201.8 [Removed]

2. Section 201.8 is removed and the section number is reserved.

Dated: December 14, 1987.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 88–47 Filed 1–4–88; 8:45 am]

BILLING CODE 1410–07–M

POSTAL SERVICE

39 CFR PART 111

Postage Deficiency; Mail Bearing Permit Imprints

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Domestic Mail Manual to provide that, after a final agency decision has been made regarding a postage deficiency for a permit imprint mailing, the Postal Service will apply subsequent postage deposits to the postage deficiency. Postage on subsequent mailings bearing permit imprints will not be applied to the mailing, and these mailings would not be accepted as fully prepaid, until both the postage deficiency and the postage for the mailings have been paid in full.

EFFECTIVE DATE: March 20, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Young, (202) 268–5321.

SUPPLEMENTARY INFORMATION: On January 23, 1987, the Postal Service published for comment in the **Federal Register** a proposed amendment to the Domestic Mail Manual (DMM) as described above (52 FR 2560–2561). Interested persons were invited to submit written comments concerning the proposed amendment by February 23, 1987.

The Postal Service received 5 written comments in response to its January 23 notice. One commenter saw no problem with the proposal as written. Another commenter saw no problem with the proposal, provided that the application of postage payments to satisfy revenue deficiencies would be used as a last resort and only after publishers exercised their rights to appeal adverse determinations to a higher and final administrative level in accordance with DMM 148. Nothing in the proposed rule would affect the right of a publisher to appeal the assessment of a revenue deficiency, in accordance with DMM 148.2.

Another commenter urged that the mailer should be given a grace period of 30 days, rather then 15 days, to pay the deficiency following a final agency decision under DMM 148.2. This would allow more time to determine the source of funds, prepare the necessary paperwork, and obtain all required signatures.

The Postal Service agrees that this is a reasonable suggestion consistent with the proposal, and it is included in the final version of 148.2, which appears in a companion rulemaking on second-class mail in this issue of the **Federal Register.**

Another commenter indicated that, in planning their operations, mailers might have entered into various contractual agreements that might become unprofitable if they had to pay a legitimate deficiency, and that a "statute of limitations" should be placed on revenue deficiencies. In practice, the Postal Service attempts to notify a mailer immediately when a revenue deficiency is discovered. This procedure is specifically intended to ensure that deficiency claims do not become stale, and is consistent with the practical fact that revenue deficiencies are typically discovered as a result of a subsequent audit of the records at a postal facility. If a deficiency is appealed, the official considering the appeal considers all issues raised by the mailer. In appropriate cases, the age of the deficiency or the financial hardship imposed by its payment may provide grounds for reducing or canceling the deficiency claim. In other cases, a mailer may arrange to pay an assessed deficiency in installments over a period as long as three years. For these reasons, the Postal Service believes it is not necessary to create a formal "statute of limitations" for deficiency claims.

Another commenter suggested that the proposal would truncate administrative due process at a relatively low level whenever an initial deficiency is found by the local post office, and that the final agency decision should be reviewed at a higher level. A mailer, however, may appeal any postmaster's revenue deficiency ruling within fifteen (15) days of its receipt by filing a written appeal to the General Manager of the Rates and Classification Center for the post office of mailing. Each Rates and Classification Center is a unit of the Office of Classification and Rates Administration, Postal Service Headquarters, Washington, DC 20260–5360. If the deficiency was initially assessed by the General Manager of a Rates and Classification Center, that ruling may be appealed directly to the Director of the Office of Classification and Rates Administration.

For the above reasons, and after consideration of all the comments, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, with certain modifications as discussed above:

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 145—PERMIT IMPRINTS

2. In part 145, add new .67 to read as follows:

145.6 Mailings with Permit Imprints.

.67 Payment of Revenue Deficiencies. After a final agency decision has been made regarding a revenue deficiency (see 148.2), the mailer will be given a grace period of 30 days in which to pay the deficiency. If any deficiency remains unpaid at the

end of 30 days, subsequent postage payments by or on behalf of the mailer will be applied to the deficiency until the deficiency is paid in full. Postage on subsequent mailings will not be considered to be prepaid in full, and permit imprint mailings by or on behalf of the mailer will not be accepted as fully prepaid, until the deficiency has been paid in full.

These changes will be published in an issue of the Domestic Mail Manual and transmitted to subscribers automatically.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-7 Filed 1-4-88; 8:45 am]

BILLING CODE 7710-12-M

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39 CFR Part 111

Postage Deficiency; Second-Class Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Domestic Mail Manual to provide that, after a final agency decision has been made regarding a postage deficiency on a mailing of a second-class publication, the Postal Service will apply subsequent postage deposits to the postage deficiency. Postage deposits for subsequent second-class mailings will not be applied to the mailings, and these mailings would not be accepted as fully prepaid, until both the postage deficiency and the postage for the mailings have been paid in full.

EFFECTIVE DATE: March 20, 1988.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Young, (202) 268-5321.

SUPPLEMENTARY INFORMATION: On January 23, 1987, the Postal Service published for comment in the **Federal Register** a proposed amendment to the Domestic Mail Manual (DMM) as described above (52 FR 2561-2562). Interested persons were invited to submit written comments concerning the proposed amendment by February 23, 1987.

The Postal Service received 6 written comments in response to its January 23 notice. One commenter saw no problem with the proposal as written. Another commenter saw no problem with the proposal, provided that the application of postage payments to satisfy revenue deficiencies was to be used as a last resort and only after publishers exercised their rights to appeal adverse determinations to a higher and final administrative level in accordance with DMM 148. Nothing in the proposed rule would affect the right of a publisher to appeal the assessment of a revenue deficiency, in accordance with DMM 148.2.

Another commenter urged that after a final agency decision has been made regarding a revenue deficiency (see DMM 148.2), the publisher should be given a grace period of thirty (30) days rather than fifteen (15) days to pay the deficiency because it would take time to determine the source of funds, prepare the necessary paperwork, and obtain all required signatures.

The Postal Service believes that a 30-day period is reasonable, and that suggestion is adopted in the final rule.

Another commenter indicated that, in planning their operations, mailers might have entered into various contractual agreements that might become unprofitable if they had to pay a legitimate deficiency, and that a "statute of limitations" should be placed on revenue deficiencies. In practice, the Postal Service attempts to notify a mailer immediately when a revenue deficiency is discovered. This procedure is specifically intended to ensure that deficiency claims do not become stale, and is consistent with the practical fact that revenue deficiencies are typically discovered as a result of a subsequent audit of the records at a postal facility. If a deficiency is appealed, the official considering the appeal considers all issues raised by the mailer. In appropriate cases, the age of the deficiency or the financial hardship imposed by its payment may provide grounds for reducing or canceling the deficiency claim. In other cases, a mailer may arrange to pay an assessed deficiency in installments over a period as long as three years. For these reasons, the Postal Service believes it is not necessary to create a formal "statute of limitations" for deficiency claims.

Another commenter suggested that the proposal would truncate administrative due process at a relatively low level whenever an initial deficiency is found by the local post office, and that the final agency decision should be reviewed at a higher level. Similarly, another commenter who opposed the change argued that the proposal would empower subordinate postal officials to make final decisions on revenue deficiencies and authorize a postmaster on that basis to deny entry to newspapers and other periodicals at the second-class rates of postage. A mailer, however, may appeal any postmaster's revenue deficiency ruling within fifteen (15) days of its receipt by filing a written appeal to the General Manager of the Rates and Classification Center for the post office of mailing. Each Rates and Classification Center is a unit of the Office of Classification and Rates Administration, Postal Service Headquarters, Washington, DC 20260-5360. If the deficiency was initially assessed by the General Manager of a Rates and Classification Center, that ruling may be appealed directly to the Director of the Office of Classification and Rates Administration.

For the above reasons, and after consideration of all the comments, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, with certain modifications as discussed above:

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

PART 148—REVENUE DEFICIENCY

2. In part 148, revise .2 to read as follows:

148.2 Appeal of Ruling.

A mailer may appeal any ruling assessing a revenue deficiency, within 15 days of its receipt, by filing a written appeal to the postmaster. The postmaster will forward all customer appeal letters to the General Manager of the Rates and Classification Center for the post office of mailing. If the dificiency was assessed initially by the General Manager, Rates and Classification Center, the mailer may appeal the ruling, within 15 days of its receipt, by filing a written appeal to the Director, Office of Classification and Rates Administration, Washington, DC 20260-5360. The mailer may be asked to furnish additional information or documents to support the appeal. Failure to furnish information or documents within 30 days of such a request will be grounds for denying an appeal. A final agency decision will be made as soon as practicable after receipt of the appeal and any necessary supporting documents.

PART 480—PAYMENT OF POSTAGE

3. In Part 480, revise 481 to read as follows:

481 Payment in Advance and Revenue Deficiencies.

481.1 Payments in Advance of Dispatch. Postage must be fully prepaid before second-class mailings are dispatched. Payment must be made

through an advance deposit account established at the post office of mailing. The post office will issue receipts for advance deposit account payments. The third- or fourth-class rate may be paid only by adhesive or meter stamps, or by permit imprints. (See 411.4)

481.2 Payment of Revenue Deficiencies. After a final agency decision has been made regarding a revenue dificiency (see 148.2), the publisher of the publication will be given a grace period of 30 days in which to pay the deficiency. If any deficiency remains unpaid at the end of 30 days, subsequent postage deposits for mailings of the publication will be applied to the deficiency until the deficiency is paid in full. Postage on subsequent mailings of the publication will not be considered to be prepaid in full, and subsequent mailings of the publication will not be accepted as fully prepaid, until the deficiency has been paid in full.

These changes will be published in an issue of the Domestic Mail Manual and transmitted to subscribers automatically.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 88-8 Filed 1-4-88; 8:45 am]

BILLING CODE 7710-12-M

39 CFR Part 232

Correction and Updating of Authority Line

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purpose of this document is to revise the authority line of Part 232, correcting citation errors and adding newly enacted authority.

EFFECTIVE DATE: December 22, 1987.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268-2960.

SUPPLEMENTARY INFORMATION:

List of Subjects in 39 CFR Part 232

Law enforcement, Postal Service.

PART 232—[AMENDED]

The authority citation for Part 232 is revised to read as set forth below and the authority citations following § 232.1 are removed.

Authority: 39 U.S.C. 401, 403(b)(3); 40 U.S.C. 318, 318a, 318b, 318c; sec. 609, Treasury, Postal Service and General Government Appropriations Act, 1988, Pub. L. 100-202; 18 U.S.C. 3061.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88-57 Filed 1-4-88; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3311-6]

Illinois; Immediate Final Decision on the Revision to the State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking on the revisions to Illinois authorized Hazardous Waste Management Program.

SUMMARY: Illinois has appled for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The United States Environmental Protection Agency (U.S. EPA) has reviewed Illinois' revision application and has made a decision, subject to public review and comment, that Illinois' Hazardous Waste Program Revision Application, satisfies all of the requirements necessary to qualify for final authorization. Thus, U.S. EPA intends to approve Illinois' Hazardous Waste Program Revision Application. Illinois' application is available for public review and comment at the location indicated in the "ADDRESSES" section of this notice.

DATES: Final authorization for Illinois' program revision shall become effective March 5, 1988 unless U.S. EPA publishes a prior FR action withdrawing this action. Comments on Illinois program revision must be received by the close of business on February 4, 1988.

ADDRESSES: Copies of Illinois' program revision are available from 8:30 a.m., to 4:30 p.m., at the following addresses for inspection and copying: Illinois Environmental Protection Agency, Division of Land Pollution Control 2200 Churchill Road, Springfield, Illinois 62706, Contact Phillip Van Ness (217) 782-7836; U.S. EPA Headquarters Library, PM 211A, 401 M Streets, SW., Washington, DC 20460, Phone: 202/382-5926; U.S. EPA, Region V, Waste Management Division, Solid Waste Branch, 230 South Dearborn Street, Chicago, Illinois 60640, Contact Gary Westefer (312) 886-7450.

Written comments should be sent to Mr. Gary Westefer, U.S. EPA, Region V, Waste Management Division, Solid Waste Branch, 230 South Dearborn Street, 5HS-JCK-13, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Westefer, Illinois Regulatory Specialist, Solid Waste Branch, U.S. EPA, Region V, 230 South Dearborn, 5HS-JCK-13, Chicago, Illinois, 60604, (312) 886-7450.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Management Program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

In accordance with 40 CFR 271.21(a), revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260-266 and 124 and 270.

B. Illinois

Illinois initially received authorization on January 31, 1986. Today, Illinois is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(4). On August 7, 1986, EPA received an application from Illinois that concerned State regulatory revisions for equivalence with the following provisions of the RCRA program.

- May 10, 1984, FR—Warfarin and Zinc Phosphide (49 FR 19923);
- June 5, 1984, FR—Lime Stablized Pickle Liquor Sludge (49 FR 23287);
- November 13, 1984, FR—Exclusion of Household Waste, (49 FR 44980);
- November 21, 1984, FR—Interim Status Standards Applicability; (40 FR 46095);

• December 4, 1984, FR—Corrections to Tests Methods Manual, (40 FR 47391);
• December 20, 1984, FR—Satellite Accumulation, (49 FR 49571);
• January 4, 1985, FR—Redefinition of Solid Waste, (50 FR 614);
• January 14, 1985, FR—Dioxin, (50 FR 1978);
• April 23, 1985, FR—Interim Status Standards Landfill Cover Design Standards (50 FR 16044);
• April 30, 1985, FR—Paint Filter Test, (50 FR 18370);
• 3006(f) Availability of Information

On May 22, 1987, July 14, 1987, and September 2, 1987, Illinois submitted supplementary information. EPA has reviewed Illinois' revision application and supplementary information and has made a decision, subject to public review and comment, that Illinois' Hazardous Waste Management program revision meets all of the statutory and regulatory requirements established by RCRA and does reflect the State's equivalency with the Federal program. Consequently, U.S. EPA intends to grant Illinois authorization for this program modification. The public may submit written comments on U.S. EPA's proposed approval of this revision, up until February 4, 1988. Copies of Illinois' program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Illinois' program revision shall become effective 60 days after the date of publication in the **Federal Register** (FR) unless an adverse comment pertaining to the State's revisions, discussed in this notice, is received. If comments pertaining to the revision application or this decision are received, U.S. EPA will publish either: (1) A withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Any RCRA hazardous waste permits, or portions of permits, issued by U.S. EPA under the provisions for which the State is applying for authorization, prior to the effective date of authorization, shall be administered by U.S. EPA. U.S. EPA will suspend issuance of any further permits under the provisions for which the State is authorized on the effective date of authorization. U.S. EPA had previously suspended issuance of permits for other provisions on January 31, 1986, the effective date of Illinois' authorization for the RCRA program. Illinois is not authorized nor seeking to be authorized to operate the Federal program on Indian lands. This authority shall remain with U.S. EPA.

C. Effect of HSWA on Illinois' Authorization

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

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

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

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

Today's immediate final determination includes authorization of Illinois' program for one requirement implementing the HSWA: Dioxin, which is found in 50 FR 1978, dated January 14, 1985. Any State requirement that is more stringent than a Federal HSWA provision will also remain in effect; thus, regulated handlers must comply with any more stringent State requirements.

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

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization is for modifications to the State's existing authorized program and is not designed to increase the regulated population. It does not impose any new burdens on small entities.

List of Subjects in 40 CFR Part 272

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

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

Dated: December 10, 1987.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 88–50 Filed 1–4–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 271

[FRL–3311–8]

Florida; Final Authorization of State Hazardous Waste Program; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of correction of date.

SUMMARY: This notice corrects the date previously published in the **Federal Register** dated December 1, 1987 (52 FR 45634) for the deadline for receipt of public comments and the effective date for final authorization of Florida's hazardous waste program. The public comment period is extended until the close of business February 1, 1988. Final authorization for the federal requirements listed at 52 FR 45635 shall be effective March 1, 1988.

The addresses remain unchanged.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr. (404) 347–3016.

Date: December 23, 1987.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 88–49 Filed 1–4–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[FRL–3311–5]

Indiana; Final Determination on a Revision to the State's Authorized Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final agency determination on a revision to Indiana's Authorized Hazardous Waste Management Program.

SUMMARY: On June 29, 1987, Indiana submitted to the United States Environmental Protection Agency (U.S. EPA), a revision to its authorized Hazardous Waste Management Program under the Resource Conservation and Recovery Act, as amended (RCRA).

U.S. EPA published a notice in the **Federal Register** on September 29, 1987, announcing its tentative determination, subject to public review and comment, to grant Indiana authorization for the program modifications contained in its June 29, 1987 program revision. Today, U.S. EPA is announcing its final agency determination to grant Indiana authorization for the program modifications contained in its June 29, 1987 program revision. Today's action is being taken because by the close of business of October 29, 1987, U.S. EPA had received no adverse comment pertaining to the State's revisions discussed in the September 29, 1987, **Federal Register** notice.

EFFECTIVE DATE: Authorization for Indiana's program revision, which was discussed in the September 29, 1987, **Federal Register**, shall become effective January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. George Woods, U.S. EPA, Region V, Waste Management Division, Solid Waste Branch, Program Management Section, 230 South Dearborn Street, 5HS–JCK–13, Chicago, Illinois 60604, (312) 886–6134.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act (RCRA or "the Act") 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste management program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Management program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

In accordance with 40 CFR 271.21 (a) and (e), revisions to State hazardous waste management programs are necessary when Federal or State statutory or regulatory authority is modified or upon certain other changes to EPA's regulations in 40 CFR Parts 260–268, 124 and 270.

B. Indiana

Indiana initially received final authorization on January 31, 1986. On June 29, 1987, Indiana submitted a program revision for additional program approval. EPA has reviewed Indiana's revision application and has made a final decision that Indiana's Hazardous Waste Management program revisions does reflect the State's equivalency with the Federal program. Consequently, EPA intends to grant Indiana final authorization for this program modification.

On September 29, 1987, the notice of proposed rulemaking appeared in the **Federal Register** (52 FR 36444–36446). That **Federal Register** notice summarized all issues raised in U.S. EPA's review of the State's complete application; also, the notice listed the Non-HSWA provisions for which Indiana is being authorized. Along with the notice of tentative determination, U.S. EPA announced the availability of Indiana's application for public inspection and copying, the date of the public comment period, and U.S. EPA's tentative determination to grant Indiana final authorization. The public notice ran in 11 newspapers in Indiana and was mailed to all individuals and oraganizations on the Region V Indiana mailing lists. That September 29, 1987, **Federal Register** Notice appeared in the proposed rules section. Today's action is required so that notice of the Agency's final determination is published in the final rules section of the **Federal Register.**

C. Decision

I conclude that Indiana's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Indiana is granted final authorization to operate its hazardous waste program, subject to the limitations on its authority imposed by the Hazardous Waste Amendments of 1984, (Pub. L. 98–616, November 8, 1984) (HSWA). Indiana now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program subject to the HSWA. Indiana also has primary enforcement responsibility, although U.S. retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA. Indiana is not authorized to operate the RCRA program on Indian lands, and this authority will remain with the U.S. EPA.

As stated above, Indiana's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 8, 1984, HSWA amendments to RCRA. Prior to that date a State with Final Authorization administered its hazardous waste program entirely in lieu of the U.S. EPA. The Federal requirements no longer applied in the authorized State, and U.S. EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time-frames. New Federal requirements did not take effect in an authorized State until the State adopted those requirements as State law.

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

As a result of HSWA, there will be a dual State/Federal regulatory program in Indiana. To the extent the authorized State program is unaffected by HSWA, the State program is authorized to operate in lieu of the Federal program.

Where HSWA-related requirements apply, however, U.S. EPA will administer and enforce them in Indiana until the State receives authorization to do so. Any State requirement that is more stringent than an HSWA provision also remains in effect; thus, the universe of the more stringent provisions in HSWA and the approved State program defines the applicable Subtitle C requirements in Indiana.

Indiana is not being authorized now for any requirements implementing HSWA. Once the State is authorized to implement an HSWA requirement or prohibition the State program in that area will operate in lieu of the Federal program. Until that time the State will assist U.S. EPA's implementation of the HSWA under a Cooperative Agreement.

EPA has published a **Federal Register** notice that explains in detail HSWA and its effect on authorized States. That notice was published in the July 15, 1985 **Federal Register** (50 FR 28702), and should be referred to for further information.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization is for modifications to the State's existing authorized program and is not designed to increase the regulated population. It does not impose any new burdens on small entities.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovermental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

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

Frank M. Covington

Acting Regional Administrator.

[FR Doc. 88-51 Filed 1-4-88; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-20

[F PMR Amendment D-87]

Management of Buildings and Grounds

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: These changes to FPMR Subchapter D reflect changes in GSA organization and policy and clarify penalties for violations of the GSA Building Rules and Regulations. This revision is designed to clarify the content and update references to reflect correct publications and remove obstacles to effective buildings management.

EFFECTIVE DATE: January 5, 1988.

FOR FURTHER INFORMATION CONTACT: James Steele (202-566-1563).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-20

Fire prevention, Blind, Safety, Concessions, Crime, Federal buildings and facilities, Government property management, Security measures.

PART 101-20—[AMENDED]

1. The authority citation for Part 101-20 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. Section 101-20.302 is revised to read as follows:

§ 101-20.302 Admission to property.

Property shall be closed to the public during other than normal working hours. The closing of property will not apply to that space in those instances where the Government has approved the after-normal-working-hours use of buildings or portions thereof for activities authorized by Subpart 101-20.4. During normal working hours, property shall be closed to the public only when situations require this action to ensure the orderly conduct of Government business. The decision to close the property shall be made by the designated official under the Occupant Emergency program after consultation with the buildings manager and the ranking representative of the Law Enforcement Branch responsible for protection of the facility or the area. The designated official is defined in § 101-20.003(g) as the highest ranking official of the primary occupant agency, or the alternate highest ranking offical or designee selected by mutual agreement by other occupant agency officials. When property, or a portion thereof, is closed to the public, admission to this property, or a portion, will be restricted to authorized persons who shall register upon entry to the property and shall, when requested, display Government or other identifying credentials to the Federal Protective Officers or other authorized individuals when entering, leaving, or while on the property. Failure to comply with any of the applicable provisions is a violation of these regulations.

3. Section 101-20.307 is revised to read as follows:

§ 101-20.307 Alcoholic beverages and narcotics.

Operations of a motor vehicle while on the property by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. Entering upon the property, or while on the property, under the influence of or using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. The prohibition shall not apply in cases where the drug is being used as prescribed for a patient by a licensed physician. Entering upon the property, or being on the property, under the influence of alcoholic beverages is prohibited. The use of alcoholic beverages on property is prohibited except, upon occasions and on property upon which the head of the responsible agency or his or her designee has for appropriate official uses granted an exemption in writing. The head of the responsible agency or his or her designee shall provide a copy of all exemptions granted to the buildings manager and the Chief, Law Enforcement Branch, or other authorized

officials, reponsible for the security of the property.

4. Section 101–20.308 is revised to read as follows:

§ 101–20.308 Soliciting, vending, and debt collection.

Soliciting alms, commercial or political soliciting, and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts on GSA-controlled property is prohibited. This rule does not apply to:

(a) National or local drives for funds for welfare, health, or other purposes as authorized by 5 CFR, Parts 110 and 950, Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Organizations issued by the U.S. Office of Personnel Management under Executive Order 12353 of March 23, 1982, as amended, and sponsored or approved by the occupant agencies;

(b) Concessions or personal notices posted by employees on authorized bulletin boards;

(c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Pub. L. 95–454); and

(d) Lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under the Public Buildings Cooperative Use Act of 1976 (40 U.S.C. 490(a)(16)).

Note: Public areas of GSA-controlled property may be used for other activities permitted in accordance with subpart 101–20.4.

5. Section 101– 20.315 is revised to read as follows:

§ 101–20.315 Penalties and other laws.

Whoever shall be found guilty of violating any rule or regulations in this subpart 101–20.3 while on any property under the charge and control of the U.S. General Services Administration is subject to a fine of not more than $50 or imprisonment of not more than 30 days, or both (See Title 40 U.S. Code 316c.) Nothing in these rules and regulations shall be construed to abrogate any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated (Sec 205(c), 63 U.S. Statutes, 390; 40 U.S. Code 486(c)).

Dated: October 26, 1987.

T.C. Golden,

Administrator of General Services.

[FR Doc. 88–15 Filed 1–4–88; 8:45 am]

BILLING CODE 6820–23–M

48 CFR Part 501

[APD 2800.12 CHGE 51]

Acquisition Regulation; Miscellaneous Changes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended to revise Part 501 to update the listing of Office of Management and Budget (OMB) Control Numbers, to change the time period for incorporation of Acquisition Circulars into the regulation from six months to one year, to eliminate the requirement for the Associate Administrator or a designee to sign Acquisition Letters, to add a clarification to explain that contracting activities may not deviate from a regulation that implements a statutory requirement in a manner that would violate the underlying statute, to make other minor editorial changes and to update General Services Administration (GSA) organizational titles. The intended effect is to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: January 22, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations on (202) 566–1224.

SUPPLEMENTARY INFORMATION: This rule will not have a significant impact on contractors and/or offerors. Therefore, it was not published for public comment in the **Federal Register**. However, comments received from various GSA offices have been reconciled and incorporated, when appropriate, in the final rule. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291.

The exemption applies to this rule. The General Services Administration certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule primarily relates to the internal operations of the agency and will not have a significant impact on contractors and offerors. Therefore, no flexibility analysis has been prepared. The rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Part 501

Government procurement

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

1. The authority citation for 48 CFR Part 501 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 501.102 is revised to read as follows:

501.102 Authority.

The General Services Administration Acquisition Regulation (GSAR 5) is prescribed by the Associate Administrator for Acquisition Policy in Chapter 5, Title 48, Code of Federal Regulations, under the authority of the Federal Property and Administrative Services Act of 1949, as amended.

3. Section 501.103 is amended by revising paragraph (b) to read as follows:

501.103 Applicability.

* * * * *

(b) Part 570 of the GSAR contains policies and procedures on the acquisition of leasehold interests in real property. Parts 501, 502, 503, 505, 506, 517, 533, 552, 553, and Subparts 504.70, 507.1, 509.4, 515.1, 519.6, 519.7, 532.8 and 543.1 include policies and procedures which generally apply to all contracts including leases of read property. Other GSAR provisions do not apply to leases of real property unless a specific cross reference is made to the provision in Part 570.

* * * * *

4. Section 501.105 is amended by revising and removing the following OMB numbers (the introductory text is republished for the convenience of the user) to read as follows:

501.105 OMB Approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96–511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by OMB. The following OMB control numbers apply:

GSA segments	OMB Control Number
507.305	3090–0104
* * * *	*
514.202–4(b) [Removed]	3090–0167
* * * *	*
525.105–70(b)	3090–0198

GSA segments	OMB Control Number
528.202-71(a)	3090-0189
* * * * *	*
GSA-1142	3090-0080
* * * * *	*

5. Sections 501.107–3 and 501.170–4(a) are revised to read as follows:

501.170–3 Amendments.

The GSAR may be amended from time to time by the Associate Administrator for Acquisition Policy, with appropriate concurrences from other GSA officials (e.g., counsel and any other appropriate offices).

501.170–4 Acquisition circulars.

(a) Acquisition Circulars (AC) may be issued by the Associate Administrator for Acquisition Policy as often as may be necessary to provide coverage on an interim basis, pending subsequent incorporation of material in this regulation by amendment. The use of Acquisition Circulars to supplement the GSA is appropriate when speed of issuance is essential, numerous changes are required and all necessary changes cannot be made promptly. Acquisition Circulars will be considered canceled after one year and therefore must be incorporated in the GSAR within this time period.

* * * * *

6. Section 501.171–1 is revised to read as follows:

501.171–1 GSA orders and handbooks.

Internal agency guidance, as described in the FAR, should be issued in the form of a GSA order or handbook. "Internal agency guidance" is defined as designations and delegations of authority, assignments of delegations of authority, assignments of responsibility, work-flow procedures, internal reporting requirements, detailed operating procedures, etc. GSA orders and handbooks must not unnecessarily repeat, paraphrase, or otherwise restate the FAR and GSAR. GSA orders and handbooks dealing with acquisition may be issued by the heads of contracing activities or their designees. Policies and procedures for drafting, formatting, and numbering GSA Orders and handbooks are contained in the handbook, Writing GSA Internal Directives (OAD P 1832.3).

7. Section 501.171–2 is revised to read as follows:

501.171–2 Acquisition letters (AL).

(a) Acquisition Letters may be issued as often as may be necessary to provide coverage on an interim basis, pending subsequent incorporation of material in GSA orders or handbooks. The use of Acquisition Letters to amend GSA Orders or handbooks is appropriate when speed of issuance is essential, numerous changes are required, and all necessary changes cannot be made promptly. Acquisition Letters will be considered canceled after one year and therefore must be incorporated into the applicable order or handbook within that time period.

(b) The Associate Administrator for Acquisition Policy, and heads of contracting activities or their designees may issue Acquisition Letters. No more than two officials within a contracting activity, as appropriate, may be designated to issue Acquisition Letters.

(c) The Associate Administrator for Acquisition Policy or a designee must coordinate ALs with the heads of central office contracting activities, counsel, and the Inspector General. The heads of central office contracting activities or their designees must coordinate ALs with the Office of Acquisition Policy, counsel and the Inspector General. Regional offices must coordinate ALs with the regional counsel, and the regional Acquisition Management Staff (RAMS). When time permits, regional offices should also coordinate ALs with their Central Office counterpart and the Office of Acquisition Policy.

(d) ALs must be identified by a number that is to be assigned by the issuing activity. The number must begin with the correspondence symbol of the issuing office, must be followed by the last two digits of the calendar year in which it is issued and must be numbered consecutively beginning with 1. For example, the number of the first letter issued by the Commissioner, Public Buildings Service, in calendar year 1984 will be P–84–1. If the Commissioner, PBS, authorized the Assistant Commissioner for the Office of Procurement (PP) and the Assistant Commissioner for the Office of Real Property Development (PQ) to issue ALs on his behalf, the ALs would be numbered PP–84–1 and PQ–84–1 respectively. If the Commissioner authorizes the Assistant Commissioners to issue ALs on his behalf, but elects to sign a particular letter, the AL letter should be numbered using the correspondence symbol of the office that prepared the AL. Regional numbers will be preceded by the region number.

(e) ALs must conform to the format for instructional letters outlined in Appendix D of the Writing GSA Internal Directives Handbook (OAD P 1832.3). In addition, each AL must be numbered, dated, and include a subject line that cites the order or handbook reference. The body of the AL should contain the following paragraphs, as appropriate:

(1) Purpose.

(2) Background.

(3) Effective date.

(4) Termination date.

(5) Cancellation.

(6) Applicability (offices to which AL is applicable).

(7) Reference to regulations (FAR or GSAR), handbooks or orders.

(8) Instructions/procedures.

(f) ALs issued by the heads of Central Office contracting activities must be signed by the head of the contracting activity or a designee.

(g) ALs may be printed on colored paper in accordance with the following color designations:

Blue—Office of Acquisition Policy
Salmon—Federal Supply Service
Yellow—Information Resources Management Service
Pink—Federal Property Resources Service
Green—Public Buildings Service
White—Regional Offices and other Central Office contracting activities not listed above.

(h) The issuing office is responsible for distributing its ALs in accordance with the guidelines outlined below:

Issuing office	Distribution
Office of Acquisition Policy	All GSA contracting activities, regional Acquisition Management Staff (RAMS), Associate General Counsels and regional counsels, the Directives and Reports Management Branch (CAID).
Central Office Heads of Services and Staff Offices	Office of Acquisition Policy, Service/office contracting activities or segment thereof, RAM'S, Associate General Counsels and regional counsels, and the Directives and Reports Management Branch.
Regional Offices	Office of Acquisition Policy, appropriate Central Office contracting activities, RAM'S, regional counsel, regional contracting activities or segment thereof and the Directives and Reports Management Branch.

(i) Each issuing office must submit a report of ALs issued and canceled to the Office of GSA Acquisition Policy and Regulations (VP) on a quarterly basis. The Office of Acquisition Policy will issue a consolidated index of all AL's issued or canceled on a quarterly basis. This index will be distributed to all GSA contracting activities.

8. Section 501.402 is revised to read as follows:

501.402 Policy.

(a) In order to maintain maximum uniformity, deviations from the GSAR and the FAR must be kept to a minimum.

(b) A contracting activity must not deviate from a regulatory provision that implements a statutory requirement in a manner that would violate the underlying statute.

9. Sections 501.403 and 501.404 are revised to read as follows:

501.403 Individual deviations.

(a) Deviations by GSA activities from the GSAR or the FAR in individual cases must be approved by the head of the contracting activity. The file must disclose the nature of the deviation and the reasons for the action. A copy of the deviation approval must be furnished to the Office of Acquisition Policy (V).

(b) The deviation procedure must not be used to defeat the approval requirements contained in the FAR and GSAR.

501.404 Class deviations.

(a) Deviations by GSA activities from the FAR in classes of cases must be approved by the Associate Administrator for Acquisition Policy (V).

(b) Deviations by GSA activities from the GSAR in classes of cases must be approved by the Associate Administrator for Acquisition Policy (V). These deviations will expire in 12 months if not extended. They may be rescinded earlier without prejudice to any action previously taken.

(c) Class deviation requests must be supported by statements that fully disclose the need for and the nature of the deviation.

Dated: December 23, 1987.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88-14 Filed 1-4-88; 8:45 am]

BILLING CODE 6820-61-M

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48 CFR Parts 501 and 513

[Acquisition Circular AC-87-4]

Increase in Thresholds for Contracting Office Warrant Program and Imprest Fund Transactions

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This Acquisition Circular temporarily amends Parts 501 and 513 of the General Services Administration Acquisition Regulation (GSAR), Chapter 5, to increase the threshold for purchases which require a contracting officer warrant and to increase the threshold for purchases paid through the imprest fund. The intended effect is to provide guidance to GSA offices responsible for certain small purchasing pending a revision to the GSAR.

DATES: Effective Date: January 23, 1988.

Expiration Date: July 22, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations. (VP), (202) 566-1224.

SUPPLEMENTARY INFORMATION: This regulation was not published for public comment because it will not have a significant impact on offerors or contractors. The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The increase in the imprest fund threshold will have a minimal but beneficial impact on contractors when the imprest fund is used. The increases in the threshold for the contracting officer warrant program will have no impact outside of the agency. Therefore, a Regulatory Flexibility analysis was not prepared. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 501 and 513

Government procurement.

1. The authority citation for 48 CFR Parts 501 and 513 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Parts 501 and 513 are amended by the following Acquisition Circular:

Acquisition Circular (AC-87-4)

To: All GSA contracting activities.
Subject: Increase in thresholds for Contracting Officer Warrant Program and Imprest Fund transactions.

1. *Purpose.* The Acquisition Circular is issued to increase the threshold for purchases which requires a contracting officer warrant and to increase the threshold for purchases paid through the imprest fund.

2. *Background.*

a. The Office of Finance has requested this office revise the General Services Administration Acquisition Regulation (GSAR) to raise the imprest fund threshold for all GSA activities to $500 per transaction. In addition, the Office of Finance requested the regulation reflect the authority of imprest fund cashiers in Alaska to make routine disbursements to $500 and emergency disbursements to $600.

b. Since its establishment, the contracting officer warrant program has excluded purchases under $150 from the requirements of the program. The $150 threshold was established to coincide with the imprest fund threshold applicable at the time. Since the imprest fund threshold is being increased for all GSA activities, the threshold for the contracting officer warrant program is also being increased to maintain consistency.

3. *Effective date.* January 23, 1988.

4. *Expiration date.* July 22, 1988 unless canceled earlier or extended.

5. *Reference to regulation.* GSAR 501.603, 512.203-1, 513.404, 513.503-3 and 513.7001.

6. *Explanation of charges.*

a. Section 501.603 is amended to revise paragraph (b)(2)(i) and (ii) to read as follows:

501.603 Selection, appointment and termination of appointment.

* * * * *

(b) *Applicability.*

* * * * *

(2) A warrant is not required for:

(i) Individual purchases under $500, regardless of the method of procurement;

(ii) Any imprest fund transaction;

* * * * *

b. Section 513.203-1 is amended to revise the first two sentences of paragraph (b) to read as follows:

513.203-1 General.

* * * * *

(b) *Requesting deliveries.* Only the contracting officer (CO) and officials authorized by a CO and designated in the BPA are permitted to request deliveries. Employees designated in the BPA to place orders, who are not warranted contracting officers, may not place orders of $500 or more without first obtaining the approval of a warranted contracting officer.

* * * * *

c. Section 513-404 is revised to read as follows:

513.404 Conditions for use.

The per transaction spending limitation for cash payment made through imprest funds is $500 ($600 for emergency disbursements by imprest fund cashiers in Alaska). In addition, the conditions for use of imprest funds outlined in FAR 13.404 (b) and (c) apply.

d. Section 513.505–3 is amended to revise paragraph (b) to read as follows:

513.505–3 Standard Form 44, Purchase Order-Invoice-Voucher.

* * * * *

(b) *Authorization for using the form.* When necessary, designated employees may be authorized to make small purchases under $500 using Standard Form 44 in accordance with this subpart. Purchases of $500 or more using SF 44 may be made only by contracting officers.

* * * * *

e. Section 513.7001 is amended to revise paragraph (e) to read as follows:

513.7001 Certified invoice procedures.

* * * * *

(e) The solicitation of quotations may be performed by authorized personnel without contracting officer warrants; however, the placement of any orders of $500 or more must be approved in advance by a warranted contracting officer. The approval shall be in writing unless geographic distances make it impracticable to obtain a written approval on the GSA Form 2010 or other documentation in which case telephonic approval may be obtained and a notation of the approval recorded.

* * * * *

Dated: December 23, 1987.

Patricia A. Szervo,

Associate Administrator for Acquisition policy.

[FR Doc. 88–13 Filed 1–4–88; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. T84–01; Notice 13]

Final Listing of High Theft Lines for 1988 Model Year; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This agency has completed all of its actions for determining which car lines will be subject to the marking requirements of the motor vehicle theft prevention standard for the 1988 model year. NHTSA has previously published a listing of those car lines that were selected as high theft car lines beginning with the 1987 model year. This listing includes all of those car lines, as well as the new lines introduced in the 1988 model year that have been selected as likely high theft lines. In addition, this listing shows the three lines that have received exemptions from complying with the requirements of the theft prevention standard beginning with the 1988 model year, because they have standard equipment anti-theft devices. This final listing for the 1988 model year is intended to inform the public, particularly law enforcement groups, of the car lines that are subject to the marking requirements of the theft prevention standard for the 1988 model year.

EFFECTIVE DATE: This listing becomes effective January 5, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–4807).

SUPPLEMENTARY INFORMATION: On October 24, 1985, NHTSA published a new Part 541, *Federal Motor Vehicle Theft Prevention Standard;* 50 FR 43166. Part 541 sets forth performance requirements for inscribing or affixing identification numbers into or onto covered original equipment major parts, and the replacement parts for those original equipment parts, on all vehicles in lines selected as high theft lines.

Section 603(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2023(a)(2); hereinafter "the Cost Savings Act") specifies that NHTSA shall select the high theft lines with the agreement of the manufacturer, if possible. NHTSA has published the procedures that it follows in selecting lines as high theft lines at 49 CFR Part 542. In accordance with those procedures, NHTSA has selected five new 1988 car lines that are likely to be high theft lines. The newly selected lines are set forth in this listing, along with all those lines that had been previously selected as high theft lines. A listing of the previously selected lines was published at 51 FR 42577; November 25, 1986. Section 603(d) of the Cost Savings Act (15 U.S.C. 2023(d)) provides that the theft prevention standard must continue to apply to all lines that have been selected as high theft lines, unless those previously selected lines receive an exemption under section 605 of the Cost Savings Act (15 U.S.C. 2025).

Section 605 provides that a manufacturer may petition to have a high theft line exempted from the requirements of Part 541, if the line is equipped as standard equipment with an anti-theft device. The exemption is granted if NHTSA determines that the standard equipment anti-theft device is likely to be as effective as compliance with Part 541 in reducing and deterring motor vehicle thefts. Pursuant to this statutory provision, NHTSA has exempted one of the newly selected high theft lines from the requirements of Part 541. Additionally, two car lines that were formerly subject to Part 541 have been exempted for the 1988 model year.

This revised listing is intended to inform the public, particularly law enforcement groups, of which car lines are subject to the marking requirements of the theft prevention standard for the 1988 model year, and of which car lines are exempted from the theft prevention standard for the 1988 model year because of standard equipment anti-theft devices. The agency has already selected those new lines that are likely to be high theft lines, in accordance with Part 542 and section 603 of the Cost Savings Act. NHTSA has already exempted car lines with qualifying standard equipment anti-theft devices, in accordance with Part 543 and section 605 of the Cost Savings Act. Therefore, since this revised listing only informs the public of previous agency actions and agreements, and does not impose any additional obligations on any party, NHTSA finds for good cause that this notice should be effective as soon as it is published in the **Federal Register.**

NHTSA also finds for good cause that notice and opportunity for comment on this listing are unnecessary. All of the lines listed herein have already been selected as high theft lines in accordance with the criteria set forth in Title VI of the Cost Savings Act. Further, all of the lines exempted from Part 541 were exempted in accordance with Title VI. Public comment on the selections and exemptions is not contemplated by Title VI, and is unnecessary after the selections and exemptions have been made in accordance with the statutory criteria.

Regulatory Impacts

NHTSA has determined that this rule listing the high theft car lines subject to the requirements of the vehicle theft prevention stardard is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. As noted above, the selections have all been made in accordance with the provisions of the Cost Savings Act, and the manufacturers of the selected lines have already been informed that those lines are subject to the requirements of Part 541 for the 1988 model year. This listing does not actually exempt lines from the

requirements of Part 541; it only informs the general public of all such exemptions. Since the only purpose of this final listing is to inform the public of prior final agency action for the 1988 model year, a full regulatory evaluation has not been prepared.

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this notice is simply to inform the public of those lines that will be subject to the requirements of Part 541 for the 1988 model year. The agency believes this information will not have any economic impact on small entities.

Finally, the agency has considered the environmental impacts of this rule, in accordance with the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

PART 541—[AMENDED]

1. The authority citation for Part 541 continues to read as follows:

Authority: 15 U.S.C. 2021–2024, and 2026; delegation of authority at 49 CFR 1.50.

2. Appendix A of Part 541 is revised, Appendix A–I is removed, and Appendix A–II is redesignated as Appendix A–I and revised, to read as follows:

APPENDIX A.—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD

Manufacturer	Subject lines
Alfa Romeo	Milano 161.
BMW	3-Car line. 5-Car line. 6-Car line.
Chrysler	Chrysler Executive Sedan/Limousine. Chrysler Fifth Avenue/Newport. Chrysler Laser. Chrysler LeBaron/Town & Country. Chrysler LeBaron GTS. Dodge Aries. Dodge Daytona. Dodge Diplomat. Dodge Lancer. Dodge 600. Plymouth Caravelle. Plymouth Gran Fury. Plymouth Reliant. "Q" Car.
Ferrari	Mondial 8. 308 328
Ford	Ford Mustang. Ford Thunderbird. Mercury Capri. Mercury Cougar. Lincoln Continental. Lincoln Mark. Lincoln Town Car. Merkur Scorpio. Merkur XR4Ti.
General Motors.	Buick Electra. Buick LeSabre. Buick Regal. Buick Riviera. Cadillac Deville. Cadillac Eldorado. Cadillac Seville. Chevrolet Camaro. Chevrolet Nova. Oldsmobile Cutlass Supreme. Oldsmobile Delta 88. Oldsmobile 98. Oldsmobile Toronado. Pontiac Bonneville. Pontiac Fiero. Pontiac Firebird. Pontiac Grand Prix.
Honda	Acura Legend.
Jaguar	XJ XJ–6 XJ–40
Maserati	Biturbo. Quattroporte.
Mazda	GLC 626 MX–6
Mercedes-Benz.	190 D/E 260 E 300 CE 300 D/E 300 SE 300 TD 300 TE 300 SDL 300 SEL 380 SEC/500 SEC 380 SEL/500 SEL 380 SL 420 SEL 560 SEL 560 SEC 560 SL
Mitsubishi	Cordia. Tredia.
Porsche	911 924S 928
Reliant	SS1
Saab	900 9000
Subaru	XT
Toyota	Camry. Celica. Corolla/Corolla Sport. MR2. Starlet.
Volkswagen	Audi Quattro. Volkswagen Cabriolet. Volkswagen Rabbit. Volkswagen Scirocco.

APPENDIX A–I.—LINES EXEMPTED FROM THE REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

Manufacturer	Exempted lines
Austin Rover	Sterling.
BMW	7 Car line.
Chrysler	Chrysler Conquest.
General Motors.	Cadillac Allante. Chevrolet Corvette.
Isuzu	Impulse.
Mazda	929 RX–7
Mitsubishi	Galant Starion.
Nissan	Maxima. 300 ZX.
Toyota	Supra Cressida.
Volkswagen	Audi 5000S.

Issued on December 30, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 88–79 Filed 1–4–88; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 71030–7277]

Foreign Fishing; Foreign Fee Schedule

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA amends the fee schedule for foreign vessels fishing in the exclusive economic zone (EEZ). Under the amended schedule, foreign vessels owners will pay fees, at 44.4 percent of the exvessel value, for fish they directly harvest from the EEZ, and $354 per vessel permit application. The amended fee schedule is designed to recover $13.467 of government costs incurred under the Magnuson Fishery Conservation and Management Act (Magnuson Act). No additional fees are assessed on receipt of fish from U.S. harvesting vessels beyond the vessel application fees. This rule is needed to comply with section 204(b)(10) of the Magnuson Act.

EFFECTIVE DATE: January 1, 1988.

ADDRESS: Copies of the final regulatory impact review for this action may be

obtained from the Fees and Permits Branch, F/TS21 at the telephone number below.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 202–673–5319, or telex 467856 US COMM FISH CI.

SUPPLEMENTARY INFORMATION: NOAA amends the schedule of fees for fishing by foreign vessels in the exclusive economic zone (EEZ). The amended schedule sets a target for an annual fee collection of $13.467 million, of which $13.272 million are to be collected in poundage fees, and the balance by 1988 application fees of $354 per vessel. The schedule also requires that vessels of a nation falling under "higher fee" criteria must pay an additional incremental amount of 42.2 percent of their poundage fees.

Background

On November 4, 1987, NOAA published a Notice of Proposed Rulemaking (NPR) for a 30-day public comment period at 50 FR 42408. The proposal would amend the foreign fee schedule by revising § 611.22 of 50 CFR Part 611 according to provisions of section 204(b)(10) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1801 et seq.)

Section 204(b)(10) states, in part, "The fees * * * shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act * * * during (FY 1987) the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the exclusive economic zone during (1986) bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during (1986)." [16 U.S.C. 1824(b)(10)(B)]. The fiscal and calendar years proposed to be used in this fee schedule are shown above.

Section 204(b)(10) also states that if the Secretary of Commerce, in consultation with the Secretary of State, finds a fishing nation to be "harvesting anadromous species of United States origin at a level that is unacceptable to the Secretary", or "failing to take sufficient action to benefit the conservation and development of United States fisheries", in other words, meeting a "higher fee" criterion, subparagraph 204(b)(10)(C) applies. Subparagraph 204(b)(10)(C) requires the Secretary to impose fees for that nation which are based on the ration of the fish harvested by foreign vessels in the EEZ to the aggregate quantity of fish harvested by both foreign and domestic vessels in the EEZ only. Removing the quantity of U.S. harvested fish caught in the territorial waters from the formula increases the ratio and thereby the fees that the nation must pay.

The NPR proposed to revise § 611.22 to set a fee schedule to recover 10.98 percent of the Federal FY87 costs of carrying out the purposes of the Magnuson Act (hereafter referred to as Magnuson Act costs.) By applying the above ratio of the published catches in 1986 to the total FY87 Magnuson Act costs of $186.668 million, NOAA calculated a proposed fee target of $20.5 million of which $0.1948 million would be collected in permit application fees and $20.3 million in poundage fees for the foreign catch. The total poundage fees would amount to about 68 percent of the exvessel values of the fish estimated to be taken in 1988. NOAA also proposed to apply a surcharge of 15 percent of the fees for the Fishing Vessel and Gear Damage Compensation Fund.

The minimum level of foreign fishing fees is related to total Magnuson Act costs in the same proportion as the ratio of the catches taken by foreign vessels relates to the total U.S. and foreign catches in the EEZ and territorial waters. In 1986 (which is the most recent calendar year for which NOAA has accurate statistics) foreign vessels harvested 10.98 percent of the total catch. NOAA's proposed amendment therefore used that percentage to set the minimum fee target.

Changes are made by this final rule as the result of public comment. The principal change is to use projected estimates of the 1987 foreign and domestic catches instead of the actual figures from 1986. After applying the newly estimated harvests, NOAA recalculates $7.467 million as "at least" the minimum amount that should to be recovered from foreign fishing fees. Beyond that amount an additional $6.0 million will be collected to correct for shortfalls in actual collections.

NOAA estimates that about $0.1948 million will be received for 550 permit application fees and therefore proposed that the balance be recovered from poundage fees. The proposed foreign permit application fees were based on estimated costs of processing the applications. A fee of $354 was proposed for each vessel application. No change is made as the result of public comments.

The amount proposed to be collected from the lower poundage fees was apportioned in relation to current estimated exvessel values and tonnages of the respective species expected to be harvested by foreign vessels in 1988. The 1988 foreign catch of each species was projected and values of the catches of all species were summed to establish a total exvessel value for the foreign catch in the EEZ in 1988. The ratio of the amount proposed to be recovered from poundage fees to the total exvessel value of the projected 1988 foreign catch in the EEZ determined the proposed fee assessment rate. No change is made as a result of the comments on the proposed exvessel values or on the estimated 1988 foreign harvest. However, the fee assessment rate has been reduced from the proposed rate of 67.83 percent to a final rate of 44.4 percent of the adopted exvessel values. This change results from the reduction in the fee revenue target and is less than the 47.61 percent rate adopted in 1987. Due to changes in the catch composition and increases in exvessel values the poundage fees are slightly higher by this amendment but are substantially lower than originally proposed.

Summary of Comments

Eighteen comments were received. These were from the Governments of Japan and the German Democratic Republic, and also from the European Economic Community on behalf of member states; from Senator Bill Bradley and Congressman William Hughes; from the New England Fishery Management Council; from the Japan Fisheries Association, and the Polish Commercial counselor; from five U.S. and foreign companies and agents, and from three representatives of U.S. fishermen and their associations.

The comments tended to focus less on specific provisions of the proposed schedule than in former years, but several did address NOAA's methods for compiling Magnuson Act costs and for determining the exvessel value for Atlantic mackerel. Overall a common thread was the perceived detrimental effect of NOAA's use of published 1986 statistics to determine the foreign fee schedule target, and a consensus that the resulting fees would undermine U.S. efforts to develop the domestic industry which needs the cooperation of foreign vessel owners.

The second general issue addressed in the comments was the rationale and need for a surcharge for the Fishing Vessel and Gear Damage Compensation Fund (FVGDC). These comments centered on the policy of applying a surcharge to capitalize the Fishing Vessel and Gear Damage Compensation Fund beyond the expected duration of foreign fishing in the EEZ.

At least three foreign fishing representatives indicated that their

vessels would fish in other waters rather than the EEZ if fishing costs were kept at the level proposed. Another said his vessels probably would not fish in the EEZ. The assertions made in the foreign comments were supported by U.S. fishing companies, and representatives of U.S. fishermen and their asociations. NOAA's conclusion is that the proposed fees could work against U.S. fishery development and trade interests, and in some cases the conservation and management of fully developed U.S. fisheries. The changes described under the section entitled *The Revised Fees* result from this conclusion.

Certain other comments were specific to NOAA's methods for calculating the Magnuson Act costs. Views that NOAA has overstated costs are not well founded. An extensive record exists which sets out NOAA's position on comments directed at the cost compilations, for example item 3 of 52 FR 417, dated January 6, 1987. Variations in Department of Commerce cost elements for carrying out the purposes of the Magnuson Act may occur from year to year. The variations are a reflection of the judgment of regional and other program leaders when weighing the contributions of each program for the year in question to purposes of the Magnuson Act. An earlier review by the General Accounting Office (GAO) concluded that certain costs previously not considered by NOAA are related to the purposes of the Magnuson Act. The large increase in FY 85 Magnuson Act costs reflects NOAA's agreement with that conclusion. One such cost identified by the GAO was Coast Guard's indirect costs. Although the Coast Guard did not agree, it does provide both direct and indirect costs for fishery enforcement operations but only after removing 10 percent of the costs which are not related to the Magnuson Act. In its entirety, the Coast Guard position is that the costs of foreign fishing enforcement are the direct costs of the hours logged for foreign at-sea enforcement. These hours are clearly identified in the Coast Guard accounting system. If its position were accepted, Coast Guard's FY 87 costs for foreign enforcement would be $37.2 million which is greater than the $10.3 million proposed as a result of application of the 1986 foreign fishing ratio to both direct and indirect costs. NOAA has elected to keep the cost methodology as consistent as possible between agencies. Therefore, it believes the combined direct and indirect costs for Coast Guard fisheries enforcement represent an appropriate total Magnuson Act cost basis for the fees.

Another series of comments objected to the fee for Atlantic mackerel. Some comments indicated that the proposed exvessel value was too high because mackerel taken in the EEZ are less desirable than European mackerel owing to the low fat content and smaller size of Atlantic mackerel, the recovery of North Sea herring stocks, and the high cost of transporting the product from the EEZ to European markets. In addition, some comments objected to adopting a price taken from the European Fish Price Report for fee purposes.

NOAA does not agree. Each nation was requested on June 16, 1987, to provide information on prices. No information was provided by nations whose vessels fish Atlantic mackerel. Therefore, NOAA used the only independent information available and adopted a price which represented, at least for that sale, a price for Atlantic mackerel taken in the North Atlantic. The price was then reduced to take into account processing and transportation costs. Since the Atlantic mackerel sold presumably were also less desirable in comparison to European mackerel, the selected value should inherently reflect market considerations cited by the commenter. Therefore, NOAA believes the exvessel value used for Atlantic mackerel is correct.

Lastly, there were comments on the estimated foreign catch in 1988 presented in the proposed rule. The estimated catch is based on a survey which the agency believes is the most accurate projection available. NOAA acknowleges that TALFF in some fisheries may change during the year as the result of Council actions or the enhanced harvesting ability of one or more foreign nations in the mackerel fishery where increased TALFF could be made available to qualified foreign nations that wished to increase their harvest. In view of the uncertainty that changes in foreign harvest will actually occur, the effect changes in the estimated foreign harvest would have on fees, and the potential disruption of the continued development of the domestic industry that could result from significant fee adjustments, NOAA has not changed its estimates contained in the proposed rule.

The Revised Fees

NOAA takes the following action as a result of its conclusion that fees at the levels proposed would seriously undermine U.S. fisheries development and trade. It has balanced the benefits of fisheries development and trade against the need to recover high fees from foreign fishing vessel owners and operators for carrying out the purposes of the Magnuson Act.

Many comments stated that data used to construct the ratio of the foreign catch to the total catch are inappropriate indicators of the proportionate federal cost of foreign fishing. They suggested alternative methods or data that NOAA should consider. The methods could not be adopted as suggested, but NOAA has agreed that data used to estimate the U.S. cost of foreign fishing should be changed to reduce the adverse effects of NOAA's proposed fees on U.S. development and trade. The change should take into account recent large scale reductions in foreign fishing. These reductions have affected both foreign fishermen and the U.S. recovery of fishery management costs. A twofold purpose of this action would be to reduce the species fees below the levels proposed but also recover accumulated shortfalls to the U.S. Treasury since 1986.

Although the statistics are not yet available, NOAA estimates that foreign vessels will harvest no more than four (4) percent of the total catch in the EEZ and territorial waters in 1987 and no more than seven (7) percent in the EEZ alone. This is based on an estimate that foreign vessels will take 87 percent of the 228,461 mt allocated to date for foreign fishing and an assumption that the U.S. catch in 1987 will be at least as great as in 1986—4,772,261 mt in the EEZ and territorial waters and 2,787,505 mt in the EEZ only. When these ratios are applied to the $186.668 million Magnuson Act costs in FY 87, NOAA should collect "at least" $7.5 million under the lower fees provision of the Magnuson Act and $13.1 million under the higher fees provision. Any fees actually recovered in excess of these levels should ensure that the objectives of the Magnuson Act have been met. By using these estimates, however, a windfall benefit accrues to foreign vessel owners or operators because of the difference between the 1986 and the 1987 foreign catches. That is, the fee assessment rate drops from the 68 percent rate proposed to 25 percent of the ex-vessel values, which is well below the final 48 percent assessment rate in 1987.

While steep annual reductions in foreign fishing have caused fees to increase over the past few years, they have also led to shortfalls between the total amounts which should have been recovered by NOAA and the fees actually collected each year. Actual receipts since 1986 have fallen significantly below the minimum amounts which should have been

collected under the Magnuson Act, and total fee collections since 1981 are about $6 million under the amounts which, in retrospect, the agency calculates should have been collected for the period. In view of the likely fee shortfall and the consequent windfall benefit that would accrue to foreign fishermen if the 1988 rate were pegged at 25 percent of ex-vessel value, it is prudent to set fees at a rate calculated to recover the accumulated six million dollar shortfall during 1988. Therefore, NOAA adopts $13.5 million as the amount to be cellected under the revised schedule and assesses fees at 44.4 percent of the ex-vessel values. This is less than the percentage of fees collected in 1987 and responds to comments that the very large fee increases for 1988 contained in the proposed rule would be detrimental to both the domestic and foreign industry.

No change is made in the permit application fee of $354. NOAA believes that $0.1948 million will be recovered from 1988 permit applications and therefore sets $13.3 million as the total to be recovered from the poundage fees.

Calculations of poundage fees which are to be paid by vessel owners and operators of nations which fall under the high fee criteria indicate that the "high fees" are to be 142.2 percent of the poundage fees.

In addition to the change in the fee target, NOAA has also concurred with comments on the surcharge for the Fishing Vessel and Gear Damage Compensation Fund. The agency has decided that, as a policy matter, the surcharge will not be used to continue capitalization of the fund beyond the projected duration of foreign fishing in the EEZ. Since the current balance in the fund is sufficient for that purpose, the surcharge will be maintained at its current zero level and effectively waived.

The following table revises Table 5 as published at 42 FR 42408 to include changes made by this action and summarizes the final ex-vessel values and the final species fees.

TABLE 5.—ESTIMATED 1988 FOREIGN CATCH/VALUE WITH RECOVERED COSTS OF $13,300,000

Species	Fishery	Exvessel value ($/MT)	Estimated foreign catch (MT)	Estimated foreign catch value ($)	Species fee ($/MT)	Recovered costs ($)
Alaska Pollock	BSA/GOA	214	540	115,560	95.09	51,349
Atka Mackerel	BSA/GOA	267	1	267	118.64	119
Pacific Cod	BSA/GOA	324	30,000	9,720,000	143.97	4,319,079
Flatfish	BSA/GOA	187	105	19,635	83.09	8,725
Pacific Ocean Perch	BSA/GOA	441	1	441	195.96	196
Other Rockfish	BSA/GOA	734	1	734	326.15	326
Pacific Squid	BSA/GOA	169	1	169	75.10	75
Other Species	BSA/GOA	240	1,200	288,000	106.64	127,973
Sablefish	BSA	473	3	1,419	210.18	631
Snails	BSA	289	600	173,400	128.42	77,050
Sablefish	GOA	898	0	0	399.03	0
Jack Mackerel	WOC	573	1,500	859,500	254.61	381,919
Flatfish	WOC	713	50	35,650	316.82	15,841
Pacific Ocean Perch	WOC	721	31	22,351	320.38	9,932
Other Rockfish	WOC	756	369	278,964	335.93	123,958
Sablefish	WOC	935	86	80,410	415.47	35,730
Pacific Whiting	WOC	176	50,000	8,800,000	78.21	3,910,278
Other Species	WOC	915	250	228,750	406.58	101,645
Butterfish	NWA	618	8	4,944	274.61	2,197
Red Hake	NWA	369	0	0	163.97	0
Silver Hake	NWA	393	26	10,218	174.63	4,540
River Herring	NWA	139	96	13,344	61.76	5,929
Atlantic Mackerel	NWA	154	60,000	9,240,000	68.43	4,105,792
Squid, Illex	NWA	234	0	0	103.98	0
Squid, Loligo	NWA	553	6	3,318	245.73	1,474
Other Species	NWA	268	128	34,304	119.09	15,243
Atlantic Sharks	ABS	423	0	0	187.96	0
Pacific Billfish	PBS	1,985	0	0	882.03	0
Dolphin Fish	PBS	5,515	0	0	2,450.59	0
Striped Marlin	PBS	1,854	0	0	823.82	0
Pacific Sharks	PBS	1,103	0	0	490.12	0
Pacific Swordfish	PBS	2,337	0	0	1,038.45	0
Wahoo	PBS	2,206	0	0	980.24	0
Seamount Groundfish	SMT	397	0	0	176.41	0
Coral ($:kilogram)	WPC	206	0	0	91.54	0
TOTALS			145,002	29,931,378		13,300,000

Summary

The foregoing describes the relevant issues raised by respondents during the public comment period and NOAA's responses. NOAA has considered all comments, responded to them, and made appropriate changes prior to adopting this revision of 50 CFR 611.22. The following changes have been made:

1. A foreign catch of four (4) percent of the total catch in the EEZ and territorial waters and seven (7) percent of the total catch in the EEZ only is used in this revision of the foreign fishing fee schedule.

2. A foreign fishing fee target of $13.5 million is adopted of which $13.3 million is to be recovered by poundage fees for

the 1988 foreign catch and the balance through vessel application fees of $354/vessel.

3. Owners and operators of vessels of nations meeting one or both "high fee" criteria must pay an additional 42.2 percent of their poundage fees for the catch by these vessels.

4. Poundage fees will be paid at an assessed rate of 44.4 percent of the exvessel values adopted in this rule.

5. The surcharge for the Fishing Vessel and Gear Damage Compensation fund will be maintained at zero percent.

Classification

NOAA prepared a draft RIR that discussed the economic consequences and impacts of the proposed fee schedule and its alternatives. There were no comments specific to the draft RIR but appropriate changes have been made in the final RIR which discuss the revisions made in the final rule. Copies of the final RIR are available at the above address. Based on the RIR, the Administrator, NOAA, determined that the proposed schedule does not constitute a major rule under E.O. 12291. The regulatory impact review demonstrates that the fee schedule complies with the requirements of section 2 of E.O. 12291.

The General Counsel for the Department of Commerce certified that the proposed fee schedule will not have a significant economic impact upon a substantial number of small entities for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This certification was forwarded to the Chief Counsel for Advocacy of the Small Business Administration. Because the fee schedule will not have a significant economic impact upon a substantial number of small entities, a regulatory flexibility analysis was not prepared.

The proposed fee schedule has no direct impact on the fishery resources in the EEZ. At the most, a fee schedule might affect the harvesting strategy of foreign fishing vessels; however, the schedule as set out in the final rule meets the criterion that fees should minimize disruption of traditional fishing patterns because the 1988 fees are directly related to exvessel values and were revised to minimize effects on U.S. fishery development and trade. Since this fee schedule will not prevent the harvesting of the available total allowable level of foreign fishing (TALFF), and the environmental impact of harvesting the TALFF is described for each fishery management plan, no further environmental assessment is necessary.

The 30-day delay in implementation required by the Administrative Procedure Act is waived so that the fee schedule can be in place on January 1, 1988. If a schedule is not in place on that date, foreign fishing vessels will not be allowed to harvest fish, and the U.S. Treasury consequently will lose revenues. Furthermore, an interruption in fishing for foreign vessels already in the EEZ would be costly to the foreign fishing companies, since their vessels would be incurring fixed operating costs while sitting idle until the 30-day period elapsed.

The final rule has no information collection provisions for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

Dated: December 30, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

PART 611—[AMENDED]

For the reasons above, 50 CFR Part 611 is amended as follows:

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

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

2. Section 611.22 (a), (b)(1), (c) and (d) are revised to read as follows:

§ 611.22 Fee schedule for foreign fishing.

(a) *Permit application fees.* Each vessel permit application submitted under § 611.3 must be accompanied by a fee of $354 per vessel, plus the surcharge, if required under paragraph (d) of this section, rounded to the nearest dollar. At the time the application is submitted to the Department of State, a check for the fees, drawn on a U.S. bank, made out to "Department of Commerce, NOAA," must be sent to the Branch Chief, Fees and Permits Branch, F/TS21, National Marine Fisheries Service, Washington, DC 20235. The permit fee payment must be accompanied by a list of the vessels for which the payment is made.

(b) *Poundage fees*—(1) *Rates.* If a nation chooses to accept an allocation, poundage fees must be paid at the rate specified in Table 1, plus the surcharge required by paragraph (d) of this section.

TABLE 1.—SPECIES AND POUNDAGE FEES

[Dollars per metric ton, unless otherwise noted]

Species	Poundage fees
Northwest Atlantic Ocean fisheries:	
1. Butterfish	274.61
2. Hake, red	163.97
3. Hake, silver	174.63
4. Herring, river	61.76
5. Mackerel, Atlantic	68.43
6. Other groundfish	119.09
7. Squid, Illex	103.98
8. Squid, Loligo	245.73
Atlantic and Gulf fisheries:	
9. Shark, Atlantic	187.96
10. Shrimp, royal red	[1]
Alaska fisheries:	
11. Pollock, Alaska	95.09
12. Cod, Pacific	143.97
13. Pacific ocean perch	195.96
14. Rockfish, other	326.15
15. Mackerel, Atka	118.64
16. Squid, Pacific	75.10
17. Flounders	83.09
18. Sablefish (Gulf of Alaska)	399.03
19. Sablefish (Bering Sea and Aleutian Islands)	210.18
20. Groundfish, other	106.64
21. Snails	128.42
Pacific fisheries:	
22. Whiting, Pacific	78.21
23. Sablefish	415.47
24. Pacific ocean perch	320.38
25. Rockfish, other	335.93
26. Flounders	316.82
27. Mackerel, jack	254.61
28. Groundfish, other	406.58
Western Pacific fisheries:	
29. Coral [2]	91.54
30. Dolphin fish	2,450.59
31. Wahoo	980.24
32. Sharks	490.12
33. Marlin, striped	823.82
34. Billfish	882.03
35. Swordfish	1,038.45

[1] Reserved.
[2] Dollars per kilogram.

* * * * *

(c) *Incremental amount.* An additional incremental amount will be added to the poundage fee Bill for Collection for fish harvested by a nation during the first quarter of the next fiscal year following notification under paragraph (10)(C) of section 204(b)(10)(C). This incremental amount will be added to all subsequent quarterly bills until the quarter specified when the Assistant Administrator notifies that nation that it has taken appropriate corrective action. The incremental amount in 1988 will be 42.2 percent of the total poundage fee in each quarter during which this provision applies.

(d) *Surcharges.* The owner or operator of each foreign vessel who accepts and

pays permit application or poundage fees under paragraph (a) or (b) of this section must also pay a surcharge. The Assistant Administrator may reduce or waive the surcharge if it is determined that the Fishing Vessel and Gear Damage Compensation Fund is capitalized sufficiently. The Assistant Administrator also may increase the surcharge during the year to a maximum level of 20 percent, if needed, to maintain capitalization of the fund. The Assistant Administrator has waived the surcharge at this time.

* * * * *

[FR Doc. 87-30204 Filed 12-30-87; 5:12 p.m.]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 2
Tuesday, January 5, 1988

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

Animal and Plant Health Inspection Service

[Docket No. 87-166]

7 CFR Part 301

Movement of Citrus Fruit From Florida; Withdrawal of Proposed Rule

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: In response to comments, we are withdrawing a proposal that would have allowed certain fruit to be moved interstate from areas quarantined because of citrus canker to areas that produce commercial citrus. We are currently studing alternative protocols to allow this interstate movement and expect to publish a new proposal in the near future.

FOR FURTHER INFORMATION CONTACT: Ed Elder (301) 436–6365.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.75 (the regulations) prohibit or restrict the interstate movement of certain plants and plant parts, including fruit, to prevent the spread of citrus canker.

The regulations currently allow certain fruit, primarily citrus, to be moved interstate from areas quarantined because of citrus canker, but only to areas of the United States that are not commercial citrus-producing areas. In the **Federal Register** of September 19, 1987 (52 FR 35105–35111, Docket No. 86–347), we proposed to amend the regulations to allow this fruit to be moved interstate to any destination in the United States, including commercial citrus-producing areas, if certain conditions were met. We also proposed to revise the conditions under which fruit can be moved to areas that are not commercial citrus-producing areas.

We held public hearings in Los Angeles, California; McAllen, Texas; and Lake Alfred, Florida, on October 5, 7, and 9, 1987. We also solicited written comments and considered all that were postmarked or received on or before November 2, 1987.

Between the time the proposed rule was published and the close of the comment period, there were several new finds of the nursery strain of citrus canker in Florida. These finds could not be traced to previous infestations in other nurseries. As a result, a number of commenters asserted that we should not implement our proposed rule at this time.

In response to these comments, we are withdrawing our proposed rule. We are currently studying alternative protocols that will address the concerns of commenters and expect to publish a new proposal in the near future.

Done at Washington, DC, this 30th day of December, 1987.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–46 Filed 1–4–88; 8:45 am]

BILLING CODE 3410–34–M

Rural Electrification Administration

7 CFR Part 1701

REA Form 525, Central Office Equipment Contract (Including Installation); REA Form 545, Central Office Equipment Contract (Not Including Installation); Revision of Existing Contract Forms

AGENCY: Rural Electrification Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Rural Electrification Administration (REA) is proposing to revise REA Form 525, Central Office Equipment Contract (Including Installation) and REA Form 545, Central Office Equipment Contract (Not Including Installation) to update the terms and conditions to reflect the current technological and market environment. REA Forms 525 and 545 are used by REA telephone borrowers to purchase central office switching equipment. Forms 525 and 545 were last revised in September 1966. Public comments or suggested changes are invited.

DATE: Public comments must be received by REA no later than February 4, 1988.

ADDRESS: Submit written comments to M. Wilson Magruder, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500.

FOR FURTHER INFORMATION CONTACT: Dean Dion, Chief, Central Office Equipment Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2832, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone (202) 382–8671.

SUPPLEMENTARY INFORMATION: REA Forms 525 and 545 have become outdated due to technological advancements and other market changes. Advanced technology and equipment concepts have introduced new legal issues that need to be addressed. Contract terms and obligations need to be modified and updated to more accurately reflect present business practices. Some representative issues that need to be addressed in updating these contracts are: Expansion of patent infringement protection to include copyrights, trade marks, etc.; software right-to-use licensing terms; warranty coverage; use of information; consequential damages; delays in project; liquidated damages; bonding and insurance; independent contractor provision; and support of discontinued product. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans.

Further public comment will be solicited when the proposed rule is published.

List of Subjects in 7 CFR Part 1701

Loan Programs—communications, Telecommunications, Telephone.

Dated: December 30, 1987

Harold V. Hunter,

Administrator.

[FR Doc. 88–42 Filed 1–4–88; 8:45 am]

BILLING CODE 3410–15–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 852 3212]

Great Earth International, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Santa Ana, Calif.-based food supplements franchisor from making certain claims about the supplements' effectiveness. Respondent would be prohibited from using the name "Growth Hormone Releaser," "GHR," or any similar name unless it has substantiation that the product stimulates the body or pituitary gland to release significantly greater amounts of human growth hormone in users than in non-users.

DATE: Comments must be received on or before March 7, 1988.

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

FOR FURTHER INFORMATION CONTACT: William Golden, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603 (312) 353-8156.

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

List of Subjects in 16 CFR Part 13

Food supplements, Trade practices.

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

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

1. Proposed respondent Great Earth International, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1801 Parkcourt Place, Suite A, Santa Ana, California 92702.

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

3. Proposed respondent waives:

(a) Any further procedural steps;

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

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

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

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

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

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

Order

I

It is ordered that respondent Great Earth International, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, packaging, offering for sale, selling, advertising or distributing of the nutrient supplements known from 1983 to 1987 as "GHR Formula-PM (presently known as "Tri-Amino Plus P.M."), "L-Arginine," "L-Ornithine," or any other food of substantially similar composition, or any other free form amino acid nutrient supplement containing arginine, ornithine, tryptophane, glycine, or any combination thereof, in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product will:

A. Stimulate greater production or release of human growth hormone in users of such product than in non-users.

B. Alter human metabolism in such a way that the metabolism of users of such product will function in a manner similar to the metabolism of youth.

C. Help users achieve results similar to or superior to the results these users generally believe are achievable through use of anabolic steroids, e.g., rapid or substantial muscular development.

D. Promote greater weight loss during sleep in users of such product than in non-users of such product, when consumed before sleep.

E. Promote greater burning of fat or building, firming, toning or shaping of muscle in users of such product than in non-users.

F. Promote more rapid healing and greater protection against physical and mental fatigue in users of such product than in non-users.

G. Promote greater stimulation of the immune system and greater protection against fatigue in users of such product than in non-users.

II

It is further ordered that respondent Great Earth International, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, packaging, offering for sale, selling, advertising or distributing of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product will:

A. Beneficially affect, cure, prevent or reduce the risk of any disease or any other undersirable physical, mental or emotional state or condition;

B. Improve or strengthen any bodily part, organ, system, function or ability;

C. Eliminate, inhibit, reduce or otherwise neutralize or render harmless any harmful substance or organism that may be found in the body or environment; or

D. Assist or enable a user to lose or control weight or fat, or suppress appetite

unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation. "Competent and reliable" shall mean for purposes of this Order tests, analyses, research, studies or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in that profession or science to yield accurate and reliable results.

III

It is further ordered that respondent Great Earth International, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, do forthwith cease and desist from using the name "Growth Hormone Releaser," "GHR" or any other name of similar meaning as a brand name or description for any product, unless such products stimulates the body to produce, or the pituitary gland to release, significantly greater amounts of human growth hormone in users than in non-users and, at the time of using such name, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation inherent in use of such name.

IV

It is further ordered that respondent, its successors and assigns, shall, for at least three (3) years after the last dissemination of the representation, maintain and upon reasonable request make available to the Federal Trade Commission at a place it designates for inspection and copying copies of:

A. All materials that respondent relied upon in making any representation covered by this Order.

B. All tests reports, studies, surveys, or demonstrations in its possession or control that contradict any such representation.

V

It is further ordered that respondent shall notify the Commission within thirty (30) days before any changes in the respondent such as dissolution, assignment, or sale resulting in the emergency of a successor corporation, the creation or dissolution of subsidiaries or any other change which may affect compliance obligations arising out of this order.

VI

It is further ordered that respondent shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Great Earth International, Inc., a California corporation (the "respondent"). Under this agreement the respondent will cease and desist from making certain specific claims for three food supplements. The agreement also prohibits the respondent from making other specified claims for any product, unless it possesses competent and reliable scientific evidence that substantiates such claims.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comment by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertisements for "GHR Formula-P.M.," "L-Ornithine" and "L-Arginine," three food supplements. The Complaint accompanying the proposed consent order alleges that in connection with promoting these products the respondent engaged in deceptive acts and practices in violation of section 5 of the Federal Trade Commission Act and that the respondent disseminated false advertisements in violation of section 12 of the Federal Trade Commission Act. According to the Complaint, the respondent represented that these products would enable users to lose weight, build muscle, burn fat, promote healing, protect against mental and physical fatigue and strengthen the immune system.

The Compaint also alleges that the advertisements were deceptive because the respondent represented to consumers that it had a reasonable basis for the representations challenged in the Complaint when in fact it had no reasonable basis for these representations.

The consent order contains provisions designed to prevent the respondent from engaging in similar allegedly unlawful acts and practices in the future.

Part I of the order prohibits the respondent from representing that any of the three food supplements will:

1. Stimulate greater production or release of human growth hormone in users of such product than in non-users.

2. Alter human metabolism in such a way that the metabolism of users of such product will function in a manner similar to the metabolism of youth.

3. Help users achieve results similar to or superior to the results these users generally believe are achievable through use of anabolic steriods, e.g., rapid or substantial muscular development.

4. Promote greater weight loss during sleep in users of such product than in non-users of such product, when consumed before sleeping.

5. Promote greater burning of fat or building, firming, toning or shaping of muscle in users of such product than in non-users.

6. Promote rapid healing and greater protection against physical and mental fatigue in users of such product than in non-users; or

7. Promote greater stimulation of the immune system and greater protection against fatigue in users of such product than in non-users.

Part II of the order prohibits the respondent from representing that any product will:

1. Beneficially affect, cure, prevent or reduce the risk of any disease or any other undesirable physical, mental or emotional state or condition;

2. Improve or strengthen any bodily part, organ, system, function or ability;

3. Eliminate, inhibit, reduce or otherwise neutralize or render harmless any harmful substance or organism that may be found in the body or environment; or

4. Assist or enable a user to lose or control weight or fat, or suppress appetite,

unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Part III of the order prohibits the respondent from using the name "Growth Hormone Releaser," "GHR" or any other name of similar meaning as a brand name or description for any product, unless such product stimulates the body to produce or the pituitary gland to release significantly greater amounts of human growth hormone in users of the product than in non-users of the product and that at the time of using such name respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation inherent in use of such name.

Part IV of the order requires the respondent to:

1. Retain records that respondent contends support any future advertising representation covered by the consent order; and

2. Retain records that contradict any such representation.

Finally, Part V of the order requires the respondent to give the Federal Trade Commission prior notification of any changes in the respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change which may affect its compliance obligations under the order.

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

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-21 Filed 1-4-88; 8:45 am]

BILLING CODE 6750-01-M

Railroad Retirement Board

20 CFR Part 361

Recovery of Debts Owed to the United States Government by Employees

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) is proposing regulations to provide for the administration of its authority under 5 U.S.C. 5514 to recover debts owed to the United States by installment collections from the current pay account of Federal employees.

DATES: To be assured of consideration, comments must be in writing and must be received on or before May 4, 1988. Comments should refer to specific sections in the regulation.

ADDRESSES: Comments should be sent to: Beatrice Ezerski, Secretary to the Board, 844 Rush Street, Chicago, Illinois 60611. Comments received will be available for public inspection in Room 814, 844 Rush Street, Chicago, Illinois, from 9:00 a.m. to 3:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4944).

SUPPLEMENTARY INFORMATION: The purpose of this proposal is to provide guidelines for the administration of the Board's authority under 5 U.S.C. 5514 for recovering debts owed to the United States by installment collections from the current pay accounts of its employees.

The Debt Collection Act of 1982, Pub. L. 97-365, amended section 5514 to permit interagency recovery of general debts due the United States. However, before agencies may use this new recovery procedure, certain due process rights must be extended to the debtor. The specific procedures in this proposed regulation conform with the statutory provisions added to 5 U.S.C. 5514 by the Debt Collection Act and court decisions emphasizing the debtor's right to due process protection prior to the initiation of an action to recover for a debt (*Califano* v. *Yamasaki*, 442 U.S. 682 (1979)).

On March 9, 1984, the Government Accounting Office and the Department of Justice adopted final regulations amending the Federal Claims Collection Standards (FCCS). Although the installment collection from the current pay account of an employee described in these proposed regulations is authorized by 5 U.S.C. 5514, such a collection is still an administrative offset as defined in 31 U.S.C. 3701(a)(1). Consequently, any collection matters involving salary offset not addressed in these regulations are governed by the FCCS.

In essence the proposed regulations provide that the Board shall not deduct moneys from the current pay of one of its employees in order to satisfy a debt owed by that employee to the United States until it has afforded the employee a pre-offset hearing before an impartial adjudicator. However, there are three types of collections against pay which are not subject to the full procedural rights provided by these proposed regulations.

The first is a collection which has resulted from an overpayment caused by an employee's election of coverage or a change in coverage under a federal benefit program. An employee who makes such an election is aware, or reasonably should be aware, that the election would cause a change in the amount withheld from his or her salary. Accordingly, it is appropriate to exclude from the scope of the salary offset due process procedures routine "catch-up" retroactive collections which are necessary solely because of brief, necessary, and inevitable processing delays.

A similar situation exists with regard to ministerial adjustments of pay rates or allowances, *e.g.*, credit union allotment, union dues deduction, etc., which cannot be placed into effect immediately because of normal processing delays. The debt in this case does not arise from any error committed by either the employee or the agency. The validity of the obligation is beyond reasonable dispute and the amount due is readily ascertainable.

For these two types of collections the proposed regulations provide for a limited procedure whereby the employee is notified in advance of the amount of the retroactive collection and may dispute the retroactive collection by notifying a specified official. Furthermore, it should be noted that in collections by salary offset made for reasons other than normal processing

delays or, even if made by reason of normal processing delays but where the period for which retroactive deduction must be made will exceed four pay periods, the full due process procedures set out in the proposed regulations shall apply.

Finally, where there is no question regarding credibility and veracity, no pre-offset hearing will be granted. In these cases the Board will make its pre-offset determination under this part based upon a review of the written record. Such a provision in the regulation is consistent with the FCCS (4 CFR 102.3(c)).

In addition, these proposed regulations also cover the situation in which the Board is not the creditor agency but merely the paying agency of the debtor. In such situations, the proposed regulations provide that this agency will commence deductions from the current pay account of an employee upon receipt of a properly certified debt claim as provided by 5 CFR 550.1108.

This regulation is consistent with the Office of Personnel Management's regulation. (5 CFR 550.1101, *et seq.*).

This rule is not a major rule as defined under section 1(b) of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. In addition, any information required to be furnished under this rule is information to be provided by a government employee or agency and, therefore, is not covered by the Paperwork Reduction Act of 1980.

List of Subjects in 20 CFR Part 361

Administrative practice and procedure, Government employees, Wages, Debt collection.

1. For the reasons set forth in the preamble, Title 20 Chapter II, of the Code of Federal Regulations is proposed to be amended by adding a new Part 361 as follows:

PART 361—RECOVERY OF DEBTS OWED TO THE UNITED STATES GOVERNMENT BY GOVERNMENT EMPLOYEES

Sec.

361.1 Purpose.
361.2 Scope.
361.3 Definitions.
361.4 Determination of Indebtedness.
361.5 Notice requirements before offset.
361.6 Requests for waiver or hearing.
361.7 Written decision following a hearing.
361.8 Limitations on notice and hearing requirements.
361.9 Exceptions to requirement that a hearing be offered.
361.10 Written agreement to repay debt as alternative to salary offset.
361.11 Procedures for salary offset: When deductions may begin.
361.12 Procedures for salary offset: Types of collection.
361.13 Procedures for salary offset: Methods of collection.
361.14 Procedures for salary offset: Imposition of Interest, Penalties and Administrative Costs.
361.15 Non-waiver of rights.
361.16 Refunds.
361.17 Coordination with other government agencies.

Authority: 5 U.S.C. 5514(b)(1).

§ 361.1 Purpose.

These regulations, which implement 5 U.S.C. 5514, provide the standards and procedures which the Board will utilize to collect debts owed to the United States from the current pay accounts of its employees, including the current pay accounts of employees who owe debts to agencies other than the Board.

§ 361.2 Scope.

(a) *Coverage.* This part applies to agencies and employees as defined by § 361.3 of this part.

(b) *Applicability.* This part and 5 U.S.C. 5514 apply in recovering certain debts by administrative offset, except where the employee consents to the recovery, from the current pay account of an employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and these regulations shall be consistent with the provisions of the Federal Claims Collection Standards (FCCS).

(1) *Excluded debts or claims.* The procedures contained in this part do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1, *et seq.*), the Social Security Act (42 U.S.C. 301, *et seq.*), or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (*e.g.*, travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) *Waiver requests and claims to the General Accounting Office.* This part does not preclude an employee from requesting waiver of recovery of an overpayment under 5 U.S.C. 5584 or any other similar provision of law, or from questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office.

(3) *Compromise, suspension, or termination under the Federal Claims Collection Standards (4 CFR 101.1, et seq.).* Nothing in this part precludes the compromise, suspension or termination of collection actions where appropriate under the standards implementing 31 U.S.C. 3711, *et seq.* (4 CFR 101.1, *et seq.*).

§ 361.3 Definitions.

For purposes of this part, terms are defined as follows:

"Agency" means—

(a) An Executive Agency as defined by section 105 of Title 5, United States Code; including the U.S. Postal Service and the U.S. Postal Rate Commission;

(b) A military department as defined in section 102 of title 5, United States Code;

(c) An agency or court in the judicial branch, including a court as defined in section 610 of title 28, United States Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(d) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(e) Other independent establishments that are entities of the Federal Government.

"Creditor agency" means the agency to which the debt is owed.

"Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

"Delinquent debt" means a debt which has not been paid by the date specified in the creditor agency's initial written notification, unless satisfactory arrangements for payment have been made by that date, or where, at any time thereafter, the employee fails to satisfy his or her obligations under a payment agreement with the creditor agency.

"Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay, remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

"Employee" means a current employee of a Federal agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

"FCCS" means the Federal Claims Collection Standards jointly published by the Department of Justice and the

General Accounting Office at 4 CFR 101.1, *et seq.*

"Paying agency" means the Federal agency or branch of the Armed Forces or Reserves employing the individual and disbursing his or her current pay account.

"Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

"Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 5 U.S.C. 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other similar law.

§ 361.4 Determination of indebtedness.

In determining that an employee is indebted, the Board will review the debt to make sure it is valid and past due.

§ 361.5 Notice requirements before offset.

The Board shall provide an employee written Notice of Intent to Offset Salary (Notice of Intent). The employee will be provided the notice at least thirty calendar days before the intended deduction is to begin. In addition, the notice must provide the following:

(a) That the Board has reviewed the records relating to the claim and has determined that a debt is owed, and the origin, nature, and amount of that debt;

(b) The Board's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Board's requirements concerning interest, penalties, and administrative costs; and notification that such assessment must be made unless such payments are excused in accordance with the FCCS;

(e) Advice as to the employee's or his or her respresentative's right to inspect and copy or to be provided copies of government records relating to the debt;

(f) If not previously provided, notification of the opportunity (under terms agreeable to the Board) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Board, and documented in the Board's files (4 CFR 102.2(e));

(g) Advice that the Board will accept a repayment agreement which is reasonable in view of the financial condition of the employee at that time;

(h) If there is a statutory provision for waiver, cancellation, remission or forgiveness of the debt to be collected, advice that waiver may be requested within the period and by the procedure specified and explaining the conditions under which waiver, cancellation, remission or forgiveness is granted;

(i) Advice as to the employee's right to a hearing conducted by an official arranged by the Board (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) on the Board's determination of the debt, the amount of the debt and the percentage of dispensable pay to be deducted each pay period if a petition is filed as prescribed by the Board;

(j) Advice that the timely filing of a petition for hearing or a request for waiver (if the waiver statute or regulations are not "permissive" in nature) will stay the commencement of collection proceedings;

(k) Advice that a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than sixty days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(l) Advice as to the method and time period for requesting a hearing as provided for in § 361.5 and for requesting waiver, if it is available;

(m) Advice that any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, Part 752 of Title 5 Code of Federal Regulations, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, sections 3729–3731 of Title 31, United States Code, or any other applicable statutory authority; or

(3) Criminal penalties under sections 286, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority;

(n) Advice as to other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(o) Advice that unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee. Such refunds will not bear interest unless required or permitted by law.

§ 361.6 Requests for waiver or hearing.

(a) A request for waiver or for a hearing must be made in writing and received by the Chief Financial Officer no later than thirty calendar days after the notice is sent to the employee. This time limit may, at the discretion of the Chief Financial Officer, be extended if the employee can show that the delay was caused by circumstances which were beyond the employee's control or because of the employee's failure to receive notice of the time limit. Any right to waiver or to a hearing is forfeited unless the time limits set forth in this paragraph are complied with.

(b) The employee's request for a hearing must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(c) A request for a hearing under this paragraph is not a request for waiver. A request for waiver must state the basis for the request for waiver and whether a hearing is requested. If no request for a hearing is contained in the waiver request, no hearing will be provided.

(d) A hearing, if requested, will be an informal proceeding conducted by an administrative law judge or hearing official not under the control of the Board. The employee, or his/her representative, and the Board will be given full opportunity to present evidence, witnesses and argument.

§ 361.7 Written decision following a hearing.

Within thirty days after the hearing, the administrative law judge or hearing official shall issue a written decision stating the facts evidencing the nature and origin of the alleged debt; the amount and validity of the alleged debt; and the judge or hearing official's analysis, findings and conclusions with respect to the employee's position on liability for the debt and with respect to his or her eligibility for waiver. The decision of the administrative law judge or hearing official shall be the final agency decision.

§ 361.8 Limitations on notice and hearing requirements.

(a) The procedural requirements of this part are not applicable to collections which result from:

(1) An employee's election of coverage or of a change in coverage under a Federal benefits program which requires periodic deductions from pay and which cannot be placed into effect immediately

because of normal processing delays; and

(2) Ministerial adjustments in pay rates or allowances which cannot be placed into effect immediately because of normal processing delays.

(b) Limited procedures. If the period of the normal processing delay for which the retroactive deduction must be recovered does not exceed four pay periods, the procedures provided in §§ 361.4 and 361.5 of this section shall not apply, but the Board shall in advance of the collection issue a general notice that:

(1) Because of the employee's election, future salary will be reduced to cover the period between the effective date of the election and the first regular withholding, and the employee may dispute the amount of the retroactive collection by notifying a specified office or official; or

(2) Due to a normal ministerial adjustment in pay or allowances which could not be placed into effect immedicately, future salary will be reduced to cover any excess pay or allowances received by the employee; the employee may dispute the amount of the retroactive collection by notifying a specified office or official.

(c) Limitation on exceptions. The exceptions described in paragraphs (a) and (b) of this section shall not include a recovery required to be made for any reason other than normal processing delays in putting the change into effect, even if the period of time for which the amounts must be retroactively withheld is less than four pay periods. Further, if normal processing delays exceed four pay periods, then the full procedures prescribed under § 361.4 and 361.5 of this part shall be extended to the employee.

§ 361.9 Exception to requirement that a hearing be offered.

When an employee is overpaid due to the hours worked reported on the payroll exceeding the actual hours worked, no pre-offset hearing must be granted since in such cases there is no question regarding credibility and veracity. In these cases the Board will make its determination under this part based upon review of the written record.

§ 361.10 Written agreement to repay debt as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by the Board within 30 calendar days of the date of the Notice of Intent.

(b) *Board's response.* In response to timely notice by the debtor as described in paragraph (a) of this section, the Board will notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the Board's discretion to accept a repayment agreement instead of proceeding by offset. In making this determination, the Board will balance the agency's interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, the Board will accept a repayment agreement instead of offset only if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

§ 361.11 Procedures for salary offset: When deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Notice of Intent to collect from the employee's current pay.

(b) if the employee filed a petition for hearing with the Board before the expiration of the period provided for in § 361.5, then deductions will begin after the hearing officer has provided the employee with a hearing and the hearing officer's final written decision is in favor of the Board.

(c) If an employee retires, resigns or his or her period of employment ends before collection of a debt is completed, offset shall be made from subsequent payments of any nature (*e.g.*, final salary payment, lump-sum leave, etc.) due the employee from the Board to the extent necessary to liquidate the debt. If the debt cannot be liquidated by offset from any final payment due the employee from the Board, the Board shall liquidate the debt by administrative offset, pursuant to 31 U.S.C. 3716, from later payments of any kind which are due the employee from the United States.

§ 361.12 Procedures for salary offset: types of collection.

A debt will be collected in a lump-sum or in installments. Collection will be effected in one lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of disposable pay. In these cases, deduction will be by installments.

§ 361.13 Procedures for salary offset: methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and the Board agree to alternative arrangements for repayment. The alternative arrangement must be in writing, signed by both the employee and the Board.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in three years. Installment payments of less than $25 per pay period or $50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* The Board will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

§ 361.14 Procedures for salary offset: Imposition of interest, penalties and administrative costs.

Interest will be charged in accordance with 4 CFR 102.13.

§ 361.15 Non-waiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee involuntary payment [of all or a portion of a debt] collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 361.16 Refunds.

The Board will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(b) The Board is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

§ 361.17 Coordination with other government agencies.

(a) *Board is paying agency.* (1) If the Board receives a claim which meets the requirements of 5 CFR 550.1108 from another agency, deductions shall begin prospectively at the next officially

established pay interval. The employee will receive written notice that the Board has received a certified debt claim from a creditor agency. The notice will contain the amount of the debt and the date deductions from salary will commence and the amount of such deductions.

(2) If the Board receives a claim which does not meet the requirements of 5 CFR 550.1108, then the Board will return the claim to the creditor agency and inform the creditor agency that before any action is taken to collect the debt from the employee's current pay account, the procedures under 5 U.S.C. 5514 and 5 CFR Part 550 must be followed and a claim which meets the requirements of 5 CFR 550.1108 must be received.

(b) *Board is creditor agency.* When the Board is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until the Board provides the agency with a written certification that the procedures under this part have been followed and the Board has provided the other agency with a claim which meets the requirement of 5 CFR 550.1108.

Dated: December 22, 1987.

By Authority of the Board.

For the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88–55 Filed 1–4 88; 8:45 am]

BILLING CODE 7905-01-M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

20 CFR Part 901

Enrolled Actuaries Under Employee Retirement Income Security Act of 1974

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes modification of the regulations governing the performance of actuarial services under the Employee Retirement Income Security Act of 1974 (ERISA) by requiring that those enrolled to perform actuarial services under ERISA (enrolled actuaries) renew their enrollment every three years. A condition of eligibility for renewal would be the satisfaction of continuing professional education as delineated in the proposal. A "start up" renewal period is contemplated in which all enrolled actuaries would be required to renew their enrollment in the year 1989. Enrollment then would be placed in three year cycles, with renewal of enrollment required in the year 1992 and every third year thereafter.

DATE: Comments must be submitted in writing on or before April 4, 1988.

ADDRESS: Comments should be sent to the Executive Director, Joint Board for the Enrollment of Actuaries, c/o Department of the Treasury, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie S. Shapiro, Executive Director, Joint Board for the Enrollment of Actuaries, c/o Department of the Treasury, Washington, DC 20220, (202) 535–6787.

SUPPLEMENTARY INFORMATION:

Background

The Joint Board for the Enrollment of Actuaries (Joint Board) was formed under authority of section 3041 of ERISA, Title 29 U.S. Code, section 1241. The duties of the Joint Board include the enrollment of individuals who wish to perform actuarial services under ERISA. In addition, the Joint Board may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of an individual if it is found the individual has failed to discharge his or her duties under ERISA or who does not satisfy the requirements of enrollment as in effect at the time of enrollment.

Consistent with that authorization, the Joint Board promulgated regulations governing the enrollment of individuals who wish to perform actuarial services under ERISA, the standards for the performance of such services, bases for disciplinary actions and the procedures to be followed in taking those actions. Those regulations are found at 20 CFR Part 901. Regulations contained in 31 CFR Part 10 govern practice before the Internal Revenue Service. On January 24, 1979, those regulations were amended to authorize enrolled actuaries to practice before the Internal Revenue Service (44 FR 4940). Their eligibility for practice is limited to matters concerning ERISA and the regulations thereunder.

On January 22, 1986, an amendment to 31 CFR Part 10 was adopted as a final rule (51 FR 2875). Such amendment mandated continuing professional education for those enrolled to practice before the Internal Revenue Service (enrolled agents). The regulations contained in the amendment do not apply to enrolled actuaries because it was recognized that a viable continuing professional education program for enrolled actuaries, due to the unique nature of actuarial services, should differ from a program for enrolled agents. Further, enrolled actuaries' authorization to practice before the Internal Revenue Service is an adjunct to their eligibility to perform actuarial services under ERISA. It therefore is more appropriate for continuing professional education of enrolled actuaries to be addressed by Joint Board regulations. The start-up program relating to continuing professional education for enrolled agents has been concluded and its success has been recognized by both the Department of the Treasury and the enrolled agent community. It is now appropriate to give attention to a parallel continuing education program for enrolled actuaries.

Continuing education is of paramount importance in view of the basic fact that we are a country with a strong belief in the worth of education. That belief is grounded on the realization that competence is dependent on acquiring knowledge through education. The public supports this by its great faith in the ability of our eduction system to impart knowledge to those on whom it relies for professional services. Continuing professional education is a logical part, or extension, of these fundamental values.

For actuaries, continuing education provides a measure of assurance to the public that they have kept abreast of current standards and developments impacting on their practice. Because of the complex technical nature of actuarial science, members of the public typically are not in a position to judge the quality of services actuaries perform. In this regard, enrolled actuaries stand in a unique position. Their work products, while prepared for clients, are performed in behalf of plan participants. Other third parties also rely on actuarial reports. In fact, professional services provided by enrolled actuaries affect a large majority of Americans to some degree. The knowledge and expertise required of actuaries are constantly evolving and expanding. Changing economic conditions, new forms of business organizations, new financing methods, evolving computer technology, and always changing legal conditions create extreme demands for required knowledge on the part of enrolled actuaries.

To help assure that a successful program could be proposed for enrolled actuaries, the Joint Board elicited comments from enrolled actuaries in actuarial publications and entered into dialogues on the subject with enrolled actuaries at meetings and conventions of actuaries. Further, a task force to study the subject was established by the American Academy of Actuaries, the

American Society of Pension Actuaries, the Conference of Actuaries in Public Practice and the Society of Actuaries. A full report was furnished the Joint Board. The suggestions, comments and positions received through these vehicles have been fully considered and to great extent are blended into the proposal.

Summary of Requirements

The requirements of the program set forth in the proposed regulations, are highlighted in the following summary.

(A) *Enrollment Renewal Requirements.* All enrolled actuaries would be required to renew their enrollment every three years in order to maintain their good standing as such. This modifies the five year renewal period contained in the current regulations. It is believed that a three-year renewal cycle is a more manageable time period to administer a renewal/continuing professional education program and for enrolled actuaries to retain records and monitor their programs. In addition, the proposal would place all enrolled actuaries on a uniform renewal cycle. This also differs from the current regulations, which require renewal on the anniversary date of enrollment. This modification also will achieve efficiency in the administration of the renewal/continuing professional education program.

The proposal envisions a "start-up" renewal period. The start-up renewal would be a condition for active enrollment beginning in the year 1989. In this connection, the initial cycle would be for the period July 1, 1988 through June 30, 1989. All enrolled actuaries would be required to apply for renewal during the period between July 1, 1989 and August 15, 1989. The first effective date of renewal would be October 1, 1989. Thereafter, the three-year enrollment cycle would begin. It would encompass the period July 1, 1989 through June 30, 1992 and the period July 1 through June 30 for every three year period thereafter. Applications for renewal would be required during the period between July 1, 1992 and August 15, 1992 and between July 1 and August 15 every third year subsequent thereto. Renewal would be effective on October 1, 1992 and on October 1 every third year thereafter.

A condition of eligibility for renewal of enrollment would be the satisfaction of continuing education requirements in accordance with the proposed regulations. While the proposal provides for waiver of the mandatory continuing education requirements under certain circumstances, those individuals who receive waivers would be required to make application for renewal of enrollment.

(B) *Qualifying Programs.* It is important that qualifying educational programs be responsive to the needs of enrolled actuaries. Since such individuals have established a level of knowledge with regard to the ERISA law and regulations, the overriding consideration in determining whether a specific program qualifies as acceptable continuing education would be that it contain current subject matter which will enhance the professional knowledge of an enrolled actuary. Repeated taking of a particular course would not qualify unless it can be demonstrated that the subject matter of the course has changed sufficiently to provide additional information which would improve professional competence.

The services performed by an enrolled actuary are unique in character. Consequently, a meaningful continuing professional education program must include courses directly related to the performance of pension actuarial services under ERISA or the Internal Revenue Code. The content of such courses have been termed "core subject matter." The proposal specifies that core subject matter includes the characteristics of actuarial cost methods under ERISA, actuarial assumptions, minimum funding standards, Title IV of ERISA, requirements with respect to the valuation of plan assets, requirements for qualifications of pension plans, maximum deductible contributions, and standards of performance related to the performance of actuarial services. Other topics may be determined by the Joint Board on a case-by-case basis.

The Joint Board also recognizes the diverse nature of a pension actuary's work. It believes that limiting continuing education to ERISA and Internal Revenue Code courses of learning would be constraining in view of that diversity. An enrolled actuary therefore may complete courses of learning of a non-core nature designed to enhance the knowledge of an enrolled actuary in matters related to the performance of pension actuarial services. The publication of a complete listing of applicable educational courses or subject matter is not contemplated. However, professional knowledge of an enrolled actuary in the non-core area is considered to include pension accounting, economics, computer programs, investment and finance, communication skills, and business and non-ERISA tax law. Generally, a particular course would qualify if it can be demonstrated that the subject matter would provide substantive improvement of the professional knowledge or methods of the enrolled actuary.

To help assure the soundness of a qualifying program, it must be conducted by a sponsor who has met the requirements of the proposal. In this connection, a sponsor would be required to demonstrate that a program:

(1) Be comprised of qualifying core or non-core subject matter,

(2) Require attendance by the enrolled actuary,

(3) Be at least one class hour in length,

(4) Be conducted by a qualified instructor or discussion leader,

(5) Require a maintained record of attendance, and

(6) Require a written outline to be retained.

Correspondence or individual study programs that contribute to the professional competence of an enrolled actuary and which provide evidence of satisfactory completion by the enrolled actuary would qualify, with the amount of credit to be determined by the Joint Board. Any programs of learning that does not offer sufficient evidence that the work has actually been accomplished would not be accepted. The objective in determining the amount of credit to be allowed for specific correspondence and individual study programs (including taped study programs) would be to determine the equivalency of each such program to a comparable seminar or a comparable course for credit in an accredited educational institution. Credit would be allowed in the renewal period in which the course is completed.

It also is recognized that instructing relevant courses, writing articles and successfully completing the Joint Board's examinations in pension law are ways of demonstrating continuing education. Consequently, such activities could be used to help satisfy the continuing education requirements of the regulations.

(C) *Hours.* Each individual making application for renewal of enrollment to perform actuarial services under ERISA would be required to complete 36 hours of qualifying continuing education during each three year enrollment cycle. A minimum of 8 hours of qualifying continuing education would be required to be completed each twelve-month period of an enrollment cycle (the three year period). Of the 36 hours, at least 18 must be comprised of core subject matter; the remainder may be of a non-core nature. An individual granted initial enrollment during an enrollment cycle must begin the continuing education requirements for the July 1 to

June 30 period that follows the date of enrollment. For those beginning the second year of an enrollment cycle, 24 hours of continuing professional education must be completed; for those beginning the third year of an enrollment cycle, 12 hours of continuing professional education must be completed. At least one-half of the applicable hours must be comprised of core subject matter.

In order to effectively implement renewed enrollment for October 1, 1989, all enrolled actuaries would be required to complete 12 hours of qualifying continuing education during the period between July 1, 1988 and June 30, 1989. At least 6 hours must be comprised of core subject matter; the remainder may be of a non-core nature. Individuals granted initial enrollment during the period between July 1, 1988 and June 30, 1989 would be exempt from the continuing education requirements, but would be required to file a timely application for renewal of enrollment.

(D) *Sponsors.* Sponsors are those responsible for providing qualifying programs. To qualify, a sponsor must (1) be an accredited educational institution; (2) be recognized for continuing education purposes by a licensing body of any State, possession, territory or the District of Columbia responsible for the issuance of a license in the field of actuarial science, accounting, law or insurance; (3) be a professional organization whose programs include offering continuing professional education as contemplated in the proposal; or (4) be a sponsor who has filed a sponsor agreement with the Executive Director, Joint Board for the Enrollment of Actuaries, and has obtained approval of the program as being qualified. Organizations contemplated in No. (3) above also are required to request sponsor status of the Executive Director and furnish requested information. The proposal sets forth requirements to help assure that qualifying programs are of a quality nature and that records be retained.

(E) *Measurement of Continuing Professional Education Programs.* All programs would be measured in terms of 50-minute contact hours. The shortest recognized program would be one contact hour. The purpose of this standard is to develop a uniform system of measurement and to help assure the activity has substance. A contact hour is defined as 50 minutes of continuous participation in a program. Under this standard, credit would be granted only for full contact hours. A program lasting more than 50 minutes but less than 100 minutes would count only for one hour. For example, a program lasting 100 minutes would be considered two contact hours and a program lasting 90 minutes would be considered one contact hour. When individual segments are fewer than 50 minutes at continuous conferences, conventions and the like, the sum of the segments would be considered one total program, but would be assessed on the basis of a 50-minute contact hour and multiples thereof. For example, two 90-minute segments (180 minutes) at a continuous program would be counted as three contact hours.

For university or college courses, each semester hour credit would equal 15 credit hours. A quarter hour credit would equal 10 contact hours.

(F) *Recordkeeping Requirements.* In order to evidence the completion of continuing education programs, an enrolled actuary would be required to maintain records relative thereto for a period of three years following the date of renewal. Recordkeeping also is required of those who satisfy continuing education by serving as an instructor or preparing publications.

(G) *Waiver.* The proposal contemplates waiver of the mandatory continuing education requirement under circumstances warranting it. For example, the waiver would be available in those instances where physical circumstances preclude an enrolled actuary from meeting the requirements of the proposal, e.g., prolonged debilitating illness or extended absence from the country of his or her residence. In all instances, a request for waiver would be required to be accompanied by such documentation and/or explanation as the Executive Director deems necessary. The granting of a waiver would not obviate the requirement of filing a timely application for renewal of enrollment.

(H) *Fees.* A reasonable renewal fee may be charged each enrolled actuary who submits a renewal application. The purpose of the fee is to provide funding for administration of the renewal of enrollment program. The amount of the fee would be established by the Joint Board and would be nonrefundable. Fee information would be published in the renewal material furnished enrolled actuaries.

(I) *Failure to Renew and/or Satisfy Continuing Professional Education Requirements.* An enrolled actuary who fails to make application for renewal or who fails to meet the continuing education requirements would have his or her enrollment placed in an inactive status until such time that an application for renewal of enrollment is filed and/or evidence of compliance with the regulations is provided. During inactive status, the individual would be ineligible to perform actuarial services under ERISA.

An individual in an inactive status who has not filed an application for renewal of enrollment or who has not satisfied the requirements for renewal within three years from the expiration date of his or her last active enrollment, would considered to have abandoned such enrollment and the enrollment would be terminate. Enrollment must then be reestablished by meeting the requirements of eligibility for enrollment in effect at the time such reestablishment is requested.

(J) *Verification.* Under the proposal, the Joint Board could review the continuing education records of enrolled actuaries and/or program sponsors in a manner deemed appropriate to determine compliance with the requirements and standards for renewal of enrollment as provided. Failure to comply with a request for the appropriate documentation could result in a disqualification of the continuing education hours claimed.

Special Analyses

This rule relates solely to professional services in connection with government matters and is not expected to have any significant economic consequences.

Therefore, it has been determined that this rule is not a major rule as defined in Executive Order 12291 and a regulatory impact analysis is not required. It is hereby certified that this rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The collection of information in the proposed rule is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the information collection should be sent to: Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, ATTN: Desk Officer for the Department of the Treasury, with copies to the Joint Board at the address previously specified.

Drafting Information

The author of these regulations is Mr. Leslie S. Shapiro, Executive Director, Joint Board for the Enrollment of Actuaries. Other personnel in the Treasury Department and the Joint Board participated in the development of the regulations, both as to substance and style.

List of Subjects in 20 CFR Part 901

Administrative rules and procedures, Lawyers, Accountants, Enrolled Agents, Enrolled Actuaries, Appraisers.

Authority

These proposed rules are issued under authority of 88 Stat. 1002; 29 U.S.C. 1241, 1242, See also 5 U.S.C. 301; 31 U.S.C. 330; and 31 U.S.C. 321.

Proposed Amendments to Regulations

PART 901—[AMENDED]

Accordingly, 20 CFR Part 901 is proposed to be amended as follows:

§ 901.11 [Amended]

1. Section 901.11 of Subpart B is proposed for amendment by removing the last two sentences and inserting after the first sentence the following: "Subject to the provisions of Subpart D of this part, an individual must renew his or her enrollement in the manner described in subsection (d) of this section."

2. Section 901.11 of Subpart B is to be amended by inserting new paragraph (d) through (n) to read as follows:

§ 901.11 [Amended]

* * * * *

(d) *Renewal of enrollment.* To maintain active enrollment to perform actuarial services under the Employee Retirement Income Security Act of 1974, each enrolled actuary is required to have his/her enrollment renewed as set forth herein. Failure by an individual to receive notification of the renewal requirement from the Executive Director of the Joint Board will not be justification for circumvention of such requirement.

(1) All individuals enrolled before July 1, 1989 shall apply for renewal of enrollment during the period between July 1, 1989 and August 15, 1989. The effective date of renewal of such individuals is October 1, 1989.

(2) Thereafter, applications for renewal will be required of all enrolled actuaries between July 1, 1992 and August 15, 1992, and between July 1 and August 15 of every third year subsequent thereto.

(3) Individuals who receive initial enrollment during a renewal application period are not required to file an application for renewal of enrollment during that period. However, they are required to file an application for renewal of enrollment during the next renewal application period and all those following.

(4) The Executive Director of the Joint Board will notify the individual of renewal of enrollment at his/her address of record with the Joint Board.

(5) A reasonable non-refundable fee may be charged for each application for renewal of enrollment filed.

(6) Forms required for renewal may be obtained from the Executive Director, Joint Board for the Enrollment of Actuaries, c/o Department of the Treasury, Washington, DC 20220.

(e) *Condition for Renewal: Continuing Professional Education.* To qualify for renewal of enrollment, an enrolled actuary must certify, on the form prescribed by the Executive Director, that he/she has satisfied the following continuing professional education requirements.

(1) *For renewed enrollment effective October 1, 1989.*

(i) A minimum of 12 hours of continuing education credit must be completed between July 1, 1988 and June 30, 1989. Of the 12 hours, at least 6 hours must be comprised of core subject matters; the remainder may be comprised of non-core subject matter.

(ii) An individual who receives initial enrollment between July 1, 1988 and June 30, 1989 is exempt from the continuing education requirement for the renewal of enrollment effective October 1, 1989, but is required to file a timely application for renewal of enrollment.

(2) *For renewed enrollment effective October 1, 1992 and every third year thereafter.*

(i) A minimum of 36 hours of continuing education credit must be completed between July 1, 1989 and June 30, 1992, and during each three year period subsequent thereto. Each such three year period is known as an enrollment cycle. Of the 36 hours, at least 18 must be comprised of core subject matter; the remainder may be of a non-core nature.

(ii) A minimum of 8 hours of continuing education credit must be completed in each year of an enrollment cycle.

(iii) An individual who receives initial enrollment during an enrollment cycle must begin the continuing education requirements for the July 1 and June 30 period following the date of enrollment. For those beginning the second year of an enrollment cycle, 24 hours of continuing professional education must be completed; for those beginning the third year of an enrollment cycle, 12 hours of continuing professional education must be completed. At least one-half of the applicable hours must be comprised of core subject matter; the remainder may be comprised of non-core subject matter.

(f) *Qualifying continuing education*—(1) *In General.* To qualify for continuing education credit consistent with the requirements of the above subsections, a course of learning must be a qualifying program comprised of core and non-core subject matter conducted by a qualifying sponsor.

(i) Core subject matter is a qualifying program designed to enhance the knowledge of an enrolled actuary with respect to matters directly related to the performance of pension actuarial services under ERISA or the Internal Revenue Code. Such core subject matter includes the characteristics of actuarial cost methods under ERISA, actuarial assumptions, minimum funding standards, Title IV of ERISA, requirements with respect to the valuation of plan assets, requirements for qualification of pension plans, maximum deductible contributions, and standards of performance for actuarial services. Other topics may be determined by the Joint Board on a case-by-case basis to comprise core subject matter. The Joint Board also may publish from time to time additional topics that will satisfy the requirements of core subject matter.

(ii) Non-core subject matter is a qualifying program designed to enhance the knowledge of an enrolled actuary in matters related to the performance of pension actuarial services. Examples include economics, computer programs, pension accounting, investment and finance, communication skills and business and general tax law.

(2) *Qualifying Programs*—(i) *Formal programs.* Formal programs qualify as continuing education programs if they:

(A) Require attendance;

(B) Require that the program be conducted by a qualified instructor, discussion leader or speaker, i.e. a person whose background, training, education and/or experience is appropriate for instructing or leading a discussion on the subject matter of the particular program; and

(C) Require a written outline and/or textbook and certificate of attendance provided by the sponsor, all of which must be retained by the attendee for a three-year period following renewal of enrollment.

(ii) *Correspondence or individual study programs (including taped programs).* Qualifying continuing education programs include correspondence or individual study programs completed on an individual basis by the enrolled actuary and conducted by qualifying sponsors. The allowable credit hours for such programs will be measured on a basis comparable to the measurement of a seminar or course for credit in an

accredited educational institution. Such programs qualify as continuing education programs if they:

(A) Require registration of the participants by the sponsor;

(B) Provide a means for measuring completion by the participants (e.g., written examination); and

(C) Require a written outline and/or textbook and certificate of completion provided by the sponsor which must be retained by the participant for a three-year period following renewal of enfollment.

(iii) *Serving as an instructor, discussion leader or speaker.*

(A) One hour of continuing education credit will be awarded for each contact hour completed as an instructor, discussion leader or speaker at an educational program which meets the continuing education requirements of this part.

(B) One hour of continuing education credit will be awarded for actual subject preparation time for each contact hour completed as an instructor, discussion leader or speaker at such programs. It will be the responsibility of the individual claiming such credit to maintain records to verify preparation time.

(C) The maximum credit for instruction and preparation may not exceed 50% of the continuing education requirement for an enrollment cycle.

(D) Presentation of the same material in an instructor, discussion leader or speaker capacity beyond more than one time will not qualify for continuing education credit.

(E) The nature of the subject matter will determine if credit will be of a core or non-core nature.

(iv) *Credit for published articles, books, etc.*

(A) Continuing education credit will be awarded for publication with respect to matters directly related to the continuing professional education requirements of this section.

(B) The credit allowed will be on the basis of one hour credit for each hour of preparation time for the material. It will be the responsibility of the person claiming the credit to maintain records to verfiy preparation time.

(C) The maximum credit for publications may not exceed 25% of the continuing education requirement of any enrollment cycle.

(D) The nature of the subject matter will determine if credit will be of a core or non-core nature.

(3) *Periodic examination.* Individuals may establish eligibility for renewal or enrollment for any enrollment cycle by:

(i) Achieving a passing score on the pension law actuarial examination offered by the Joint Board and adminstered under this part during the three-year period prior to renewal; and

(ii) Completing a minimum of 8 hours of qualifying continuing education in core subject matter during the last year of an enrollment cycle.

(g) *Sponsors.* (1) Sponsors are those responsible for presenting programs.

(2) To qualify as a sponsor, a program presenter must:

(i) By an accredited educational institution;

(ii) Be recognized for continuing education purposes by the licensing body of any State, possession, territory, Commonwealth, or the District of Columbia responsible for the issuance of a license in the field of actuarial science, insurance, accounting or law;

(iii) Be recognized by the Executive Director of the Joint Board as a professional organization or society whose programs include offering continuing professional education opportunities in subject matter within the scope of this part; or

(iv) File a sponsor agreement with the Executive Director of the Joint Board to obtain approval of the program as a qualifying continuing education program.

(3) Professional organizations or societies and others wishing to be considered as qualifying sponsors shall request such status of the Executive Director of the Joint Board and furnish information in support of the request together with any further information deemed necessary by the Executive Director.

(4) A qualifying sponsor must ensure the program complies with the following requirements.

(i) Programs must be developed by individual(s) qualified in the subject matter.

(ii) Program subject matter must be current.

(iii) Instructors, discussion leaders, and speakers must be qualified with respect to program content.

(iv) Programs must include some means for evaluation of technical content and presentation.

(v) Certificates of completion must be provided those who have successfully completed the program.

(vi) Records must be maintained by the sponsor to verify completion of the program and attendance by each participant. Such records must be retained for a period of three years following completion of the program. In the case of continuous conferences, conventions, and the like, records must be maintained to verify completion of the program and attendance by each participant at each segment of the program.

(5) Sponsor agreements and qualified professional organization or society sponsors approved by the Executive Director shall remain in effect for one enrollment cycle. The names of such sponsors will be published on a periodic basis.

(h) *Measurement of continuing education coursework.* (1) All continuing education programs will be measured in terms of contact hours. The shortest recognized program will be one contact hour.

(2) A contact hour is 50 minutes of continuous participation in a program. Credit is granted only for a full contact hour, i.e. 50 minutes or multiples thereof. For example, a program lasting more than 50 minutes but less than 100 minutes will count as one contact hour.

(3) Individual segments at continuous conferences, conventions and the like will be considered one total program. For example, two 90-minute segments (180 minutes) at a continuous conference will count as three contact hours.

(4) For university or college courses, each semester hour credit will equal 15 contact hours and a quarter hour credit will equal 10 contact hours.

(i) *Recordkeeping requirements.* (1) Each individual applying for renewal shall retain for a period of three years following the date of renewal of enrollment the information required with regard to qualifying continuing professional education credit hours. Such information shall include:

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and description of its content, e.g. course syllibi and/or textbook;

(iv) The dates attended;

(v) The credit hours claimed and whether core or non-core subject matter;

(vi) The name(s) of the instructor(s), discussion leader(s), or speaker(s), if appropriate;

(vii) The certificate of completion and/or signed statement of the hours of attendance obtained from the sponsor; and

(viii) The total core and non-core subject matter.

(2) To receive continuing education credit for service completed as an instructor, discussion leader, or speaker, the following information must be maintained for a period of three years following the date of renewal of enrollment;

(i) The name of the sponsoring organization;

(ii) The location of the program;

(iii) The title of the program and description of its content;
(iv) The dates of the program;
(v) The credit hours claimed and whether core or non-core subject matter; and
(vi) The total core and non-core hours
(3) To receive continuing education credit for publications, the following information must be maintained for a period of three years following the date of renewal of enrollment:
(i) The publisher;
(ii) The title of the publication;
(iii) A copy of the publication;
(iv) The date of publication;
(v) The credit hours claimed; and
(vi) Whether core or non-core subject matter.

(j) *Waivers.* (1) Waiver from the continuing education requirements for a given period may be granted by the Executive Director of the Joint Board for the following reasons:
(i) Health, which prevented compliance with the continuing education requirements;
(ii) Extended active military duty;
(iii) Absence from the individual's country of residence for an extended period of time due to employment or other reasons, provided the individual does not perform services as an enrolled actuary during such absence; and
(iv) Other compelling reasons, which will be considered on a case-by-case basis.
(2) A request for waiver must be accompanied by appropriate documentation. The individual will be required to furnish any additional documentation or explanation deemed necessary by the Executive Director of the Joint Board. Examples of appropriate documentation could be a medical certificate, military orders, etc.
(3) A request for waiver must be filed no later than the last day of the renewal application period.
(4) If a request for waiver is not approved, the individual will be so notified by the Executive Director of the Joint Board and placed on a roster of inactive enrolled individuals.
(5) If a request for waiver is approved, the individual will be so notified.
(6) Those who are granted waivers are required to file timely applications for renewal of enrollment.

(k) *Failure to comply.* (1) Compliance by an individual with the requirements of this part shall be determined by the Executive Director of the Joint Board. An individual who applies for renewal of enrollment but fails to meet the requirements of eligibility for renewal will be notified by the Executive Director at his/her last known address by first class mail. The notice will state the basis for the non-compliance and will provide the individual an opportunity to furnish in writing, within 60 days of the date of the notice, information relating to the matter. Such information will be considered by the Executive Direcor in making a final determination as to eligibility for renewal of enrollment.
(2) The Executive Director of the Joint Board may require any individual, by first class mail to his/her last known mailing address, to provide copies of any records required to be maintained under this part. The executive Director may disallow any continuing professional education hours claimed if the individual concerned fails to comply with such requirements.
(3) An individual who has not filed a timely application for renewal of enrollment, who has not made a timely response to the notice of non-compliance with the renewal requirements, or who has not satisified the requirements of eligibility for renewal will be placed on a roster or inactive enrolled actuaries for a period of three years. During this time, the individual will be ineligible to perform services as an enrolled actuary.
(4) During inactive enrollment status or at any other time an individual is ineligible to perform services as an enrolled actuary, the individual shall not in any manner, directly or indirectly, indicate he or she is so enrolled, or use the term "enrolled actuary," the designation "E.A.," or other form of reference to eligibility to perform services as an enrolled actuary.
(5) An individual placed in an inactive status may satisfy the requirements for renewal of enrollment during his/her period of inactive enrollment. If such satisfaction includes completing the continuing education requirements, a minimum of 8 hours of qualifying continuing education hours must be completed in the 12 month period preceding the date on which the renewal application is filed. Continuing education credit under this subsection may not be used to satisfy the requirements of the enrollment cycle in which the individual has been placed back on the active roaster.
(6) An individual placed in an inactive status must file an application for renewal of enrollment and satisfy the requirements for renewal as set forth in this section within three years of being placed in an inactive status. The name of such individual otherwise will be removed from the inactive enrollment roster and his/her enrollment will terminate. Eligibility for enrollment must then be reestablished by the individual as provided in this part.
(7) Inactive enrollment status is not available to an individual who is the subject of a disciplinary matter in the Office of the Executive Director of the Joint Board.

(l) *Inactive retirement status.* An individual who no longer performs services as an enrolled actuary may request placement in an inactive status at any time and such individual will be placed in an inactive retirement status. The individual will be ineligible to perform services as an enrolled actuary. Such individual must file a timely application for renewal of enrollment at each applicable renewal cycle as provided in this part. An individual who is placed in an inactive retirement status may be reinstated to an active enrollment status upon filing an application for renewal of enrollment and providing evidence of the completion of the required continuing professional educational hours for the enrollment cycle. Inactive retirement status is not available to an individual who is the subject to a disciplinary matter in the Office of the Executive Director of the Joint Board.

(m) *Renewal while under suspension or disbarment.* An individual who is ineligible to perform actuarial services and/or to practice before the Internal Revenue Service by virtue of disciplinary action is required to meet the requirements for renewal of enrollment during the period of ineligibility.

(n) *Verification.* The Executive Director of the Joint Board may review the continuing education records of an enrolled individual and/or qualified sponsor in a manner deemed appropriate to determine compliance with the requirements and standards for renewal of enrollment as provided in this part.

Date: December 15, 1987.

Paulette Tino,
Chairman, Joint Board for the Enrollment of Actuaries.

Approved:

Robert B. Zollick,
Executive Secretary, Department of the Treasury.

Morton Klevan,
Director of Policy Development and Evaluation, Pension Welfare Benefits Administration.

[FR Doc. 88-3 Filed 1-4-88; 8:45 am]
BILLING CODE 4810-25-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-65-87]

Income Taxes; Treatment of Salvage and Reinsurance Under Section 832(b)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the treatment of salvage and reinsurance in determining the paid and unpaid losses of property and casualty insurance companies. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 7, 1988. The reglations are proposed to be effective as of January 1, 1988, and apply to taxable years beginning after December 31, 1987.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-65-87), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: William L. Blagg of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention CC:LR:T), (202) 566-2338 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations section of this issue of the **Federal Register** amend Part 1 of Title 26 of the Code of Federal Regulations to provide rules relating to section 832(b)(5) of the Internal Revenue Code of 1986. This document proposes to adopt those temporary regulations as final regulations. Accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the proposed and temporary rules.

For the text of the temporary regulations, see FR Doc. 87-30193 (T.D. 8171) published in the Rules and Regulations section of this issue of the **Federal Register**.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a regulatory impact analysis is not required. Although this document is a notice of proposed rulemaking that solicits comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who submitted comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

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

List of Subjects in 26 CFR 1.801-1 through 1.832-6

Income taxes, Insurance companies.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-30194 Filed 12-30-87; 1:51 pm]

BILLING CODE 4830-01-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 203

[Docket No. RM 87-6]

Freedom of Information Act; Schedule of Fees and Methods of Payment For Services Rendered

AGENCY: Library of Congress, Copyright Office.

ACTION: Proposed rules.

SUMMARY: The Copyright Office's proposed fee schedule and fee waiver regulations comply with appropriate provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570), the Office of Management and Budget (OMB) Administrative Guidelines published in the **Federal Register** on March 27, 1987, Vol 52, No. 50, pages 10017-10020, and the Justice Department fee waiver policy guide dated April 2, 1987. The Freedom of Information Reform Act of 1986 permits agencies to charge for direct costs of providing FOIA services such as search, duplication, and in certain cases, review. It also requires that agencies promulgate "procedures and guidelines for determining when such fees should be reduced of waived." The Copyright Office invites interested parties to comment on its proposed regulation to implement the Freedom of Information Reform Act of 1986.

DATE: Comments must be received on or before February 4, 1988.

ADDRESS: Interested parties should submit ten copies of their written comments to: Office of the General Counsel, Copyright Office, Library of Congress, Department 100, Washington, DC 20540, or if by hand to: Office of the General Counsel, James Madison Memorial Building, Room 407, First and Independence Avenue SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Dorthy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 287-8380.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) requires agencies to adopt regulations that conform to the Act regarding procedures and fees for obtaining copies of agency records. It also provides that the fees established pursuant to the FOIA Reform Act do not supercede fees the agency is required to charge by another statute. The Copyright Act (Pub. L. 94-553) either establishes a fee schedule for copies and other services, or requires the Register of Copyright to establish fees for most copies or services, requested from this Office. Fees for requests for copies or service made under the Privacy Act (Pub. L. 93-579) will be assessed according to the fee schedule established pursuant to the administration of that Act and found in

37 CFR 204.6. Fees for searching and making copies of all other categories of records will be assessed according to the fees stated in the proposed rule or if not specifically stated, the Office will assess the direct costs incurred in filling the request. Part 203.6 of 37 CFR, Chapter II would be substantially revised to conform to the requirements of the FOIA Reform Act.

List of Subjects in 37 CFR Part 203

Freedom of Information Act.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes to amend Part 203 of 37 CFR, Chapter II.

PART 203—[AMENDED]

1. The authority citation for Part 203 would continue to read as follows:

Authority: Copyright Act of 1976, Pub. L. 94–553, 90 Stat. 2541 (17 U.S.C. 702).

2. Section 203.6 would be revised to read as follows:

§ 203.6 Schedule of fees and methods of payment for services rendered.

(a) *General.* The fee schedule of this section does not apply with respect to the charging of fees for those records for which the Copyright Act of 1976, title 17 of the United States Code (Pub. L. 94–553) requires a fee to be charged. The fees required to be charged are contained in section 708 of title 17 U.S.C., or have been established by the Register of Copyrights or Library of Congress pursuant to the requirements of that section. If the Copyright Office receives a request for copies or other services involving the public records or indexes of the Office or for copies of deposited articles for which a fee is required to be charged, the Office will notify the requester of the procedure established to obtain the copies or services and the amount of the chargeable fees. Fees pursuant to title 5 U.S.C., section 552 for all other services not involving the public records of the Copyright Office will be assessed according to the schedule in paragraph (b) of this section. All fees so assessed shall be charged to the requester, except where the charge is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. Requests by record subjects asking for copies of records about themselves shall be processed under the Privacy Act fee schedule found in 37 CFR 204.6.

(b) *FOIA requests.* In responding to requests under this part, the following fees shall be assessed, unless a waiver or reduction in fees has been granted pursuant to paragraph (d) of this section:

(1) For copies of certificates of copyright registration, $4.

(2) For Copies of all other Copyright Office records not otherwise provided for in this section $.45 per page.

(3) For each hour or fraction of an hour spent in searching for a requested record, $10, except that no search fee shall be assessed with respect to requests by educational institutions, non-commercial scientific institutions, and representatives of the news media. Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. Fees may be assessed for time spent searching even if the search fails to locate any responsive records or where the records located are subsequently determined to be entirely exempt from disclosure.

(4) For certification of each document, $4.

(5) Other costs incurred by the Copyright Office in fulfilling a request will be chargeable at the actual cost to the Office.

(6) For computer searches of records, which may be undertaken through the use of existing programming, the actual direct costs of conducting the search including the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the direct costs of operator/programmer salary apportionable to search (at no more than $10.00 per hour or fraction thereof so spent).

(7) No review fees will be charged for time spent in resolving legal or policy issues affecting access to Office records. No charge will be made for the time involved in examining records to determine whether some or all such records may be withheld.

(c) *Fee limitations.* The following liminations or fees shall apply:

(1) Except for requesters seeking records for commercial use the following will be provided without charge—

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(2) No fees will be charged for ordinary packaging and mailing costs.

(d) *Waiver or reduction of fees.* (1) Records responsive to a request under 5 USC 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where the Office determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Office, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not parimarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—the Office shall consider the following four factors in sequence:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."

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

(iii) The contribution to an understanding of the subject by the public likely to result from disclosures: Whether disclosure of the requested information will contribute to "public understanding."

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

(3) In order to determine whether the second fee waiver requirement is met—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requester—the Office shall consider the following two factors in sequence:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.

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

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(e) *Notice of anticipated fees in excess of $25.00.* Where the Office determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the Office shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the Office shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the requests will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to a requester pursuant to this paragraph shall offer him the opportunity to confer with Copyright Office personnel in order to reformulate his request to meet his needs at a lower cost.

(f) *Aggregation of requests.* Where the Office reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Office may aggregate any such requests and charge accordingly.

(g) *Advance payments.* (1) Where the Office estimates that a total fee to be assessed under this section is likely to exceed $250.00, it may require the requester to make an advance payment of an amunt up to the entire estimated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billings, the Office may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before the office begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraph (g)(1) and (g)(2) of this section, the Office shall not require the requester to make an advance payment, i.e., a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(h) *Charging interest.* The Office may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent to the requester. Once a fee payment has been received by a component of the Office, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in section 3717 of title 31 U.S.C. and shall accrue from the date of the billing.

Dated: December 17, 1987.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 88–44 Filed 1–4–88; 8:45 am]

BILLING CODE 1410–07–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1041, 1048, and 1049

[Ex Parte No. MC–37 (Sub-No. 40)]

Commercial Zones and Terminal Areas

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rule.

SUMMARY: After a review of the comments received in response to our advance notice of proposed rulemaking (ANPR) (52 FR 15357, April 28, 1987), we propose to expand commercial zones of municipalities (49 CFR 1048) and terminal areas of motor carriers (49 CFR 1049) by revising the existing population-mileage formula (49 CFR 1048.101). We also propose to revise our rule of construction for operating authority of motor carriers (49 CFR 1041.21) to comport with the proposed revision of commercial zone and terminal area regualtions.

DATE: Comments are due by February 4, 1988.

ADDRESSES: The original and 10 copies of comments referring to Ex Parte No. MC–37 (Sub–No. 40) should be sent to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Thomas J. Barry (202) 275–7540 and Mark S. Shaffer (202) 275–7292 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: In our ANPR we announced our intention to consider amending regulations to redescribe and expand commercial zones of municipalities and terminal areas.[1] They were last expanded in 1976. We requested comments in light of economic and demographic changes that have occurred since then.

After reviewing the comments received, we now propose to amend the population-mileage formula by reducing the number of population categories into which cities are grouped (see 49 CFR 1048.101(c)(1)–(7)), and by increasing the mileage measurement for each population category, so that all municipalities will have larger zones than under the existing formula. In the ANPR, we proposed the following formula:

Population	Miles
Under 100,000	15
100,000–499,999	25
500,000–1,000,000	40
Over 1,000,000	50

Commentors favoring zone expansion state that this formula is reasonable, while interests opposed to zone expansion believe it describes zones that are too broad. We propose to adopt a formula that is at least as broad as that proposed in the ANPR. We request comments on whether the ANPR formula is too narrow, and whether there should be fewer or more categories of cities by population. Commentors are invited to submit any suggestions they might have as to what the formula should be, giving specific reasons. Commentors should specifically address the criteria traditionally used to determine commercial zones, and any other factors they believe to be relevant.

We also propose to replace the formula at 49 CFR 1049.2 for terminal areas at unincorporated communities with a rule that provides that terminal areas at unincorporated communities shall extend 15 miles from their central post offices. For the sake of uniformity, we propose to revise the rule of construction for motor carrier operating authority to serve a particular

[1] A commercial zone is the georgraphic area around a municipality within which motor carrier operations may be performed exempt from regulation by the Commission. *See* 49 U.S.C. 10526(b)(1). A terminal area is the geographic area within which exempt pickup and delivery operations may be performed in connection with a motor carrier's regulated line-haul movement. See 49 U.S.C. 10523. Terminal areas are coextensive with commercial zones of municipalities carriers may serve in their line-haul operations. *See* 49 CFR 1049.1. Terminal areas for unincorporated communities are defined by the formula at 49 CFR 1049.2. A similar formula is used to construe the scope of motor carrier operating authority to serve unincorporated areas. See 49 CFR 1041.21.

unincorporated area (49 CFR 1041.21) to comport with the terminal area regulations by adopting a similar 15-mile rule instead of the current formula. Commentors are invited to address these aspects of our proposal.

Adoption of a revised population-mileage formula may eliminate the need for the specifically defined zones now set forth in 49 CFR 1048.1 *et seq.* However, it is not our intention to reduce the size of any existing zones. We request interested parties to advise us if areas within any of the current specifically defined zones would not be included within the commercial zone of the base municipality if its zone were defined by the formula proposed above. We will specifically define such zones to ensure that all areas within current zones are in the new zones. Of course, we will continue to permit interested parties to petition the Commission for redefinition of any commercial zone that is not adequately defined by the population-mileage formula.

The proposed expansion of the commercial zones and terminal area exemptions would apply to both motor carriers of property and motor carriers of passengers, except that passenger operations at Mexican border municipalities would be excluded from the expanded zones for the reasons stated in *Petition to Estab.—Commercial Zone Certain Counties in TX.*, 133 M.C.C. 530, 540 (1986).

Finally, we propose to simplify and streamline the commercial zone and terminal area regulations by eliminating surplusage, updating all statutory citations, eliminating unnecessary sections (*e.g.*, 49 CFR 1048.13), and rearranging and renumbering the sections.

Additional information is contained in the Commission's decision. A copy may be obtained from the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, (202) 275–7428. Assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Environmental and Energy Considerations

We reiterate our preliminary conclusion in the ANPR that this action will not significantly affect the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Adoption of the proposed rules will not have a significant economic impact on a substantial number of small entities. While the proposed amendments expand exemptions from economic regulations, the impact will not be significant.

List of Subjects

49 CFR 1041

Motor Carriers.

49 CFR 1048

Motor Carriers.

49 CFR 1049

Motor Carriers and Freight Forwarders.

Authority: 49 U.S.C. 10101, 10321, 10523, and 10526, and 5 U.S.C.553.

Decided: December 22, 1987.

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

Noreta R. McGee,

Secretary.

[FR Doc. 88–4 Filed 1–4–88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 71276-7276]

Pacific Halibut Fisheries

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

ACTION: Notice of proposed Pacific Halibut Catch Sharing Plan and request for comments.

SUMMARY: NOAA announces and requests comments on a proposed Catch Sharing Plan developed by the Pacific Fishery Management Council (PFMC) to allocate the catch of Pacific halibut in International Pacific Halibut Commission statistical catch Area 2A. This allocation plan pertains to distribution of catch between Indian and non Indian fisheries for 1988 only, and between non-Indian commercial and recreational fisheries for 1988 and 1989, only.

This proposed plan establishes a distribution of harvest of the poundage of halibut determined by the International Pacific Halibut Commission to be available for harvest in Area 2A. The intended effect of this action is to obtain public comments on the plan which will be considered by the Pacific Fishery Management Council before forwarding to the Secretary of Commerce for approval and to the International Pacific Halibut Commission for implementation.

DATE: Comments on the proposed plan must be received by January 13, 1988.

ADDRESS: Send comments to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Ave., Portland, OR 97201, or Rolland A. Schmitten, Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six at 503–221–6352 or William L. Robinson, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Northern Pacific Halibut Act (The Act), Pub. L. 97–176, 16 U.S.C. 773c(c), authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters which are in addition to but not in conflict with regulations of the International Pacific Halibut Commission (IPHC). The geographic area herein involved is all U.S. marine waters lying south of the United States-Canada border including Puget Sound, known as statistical Area 2A.

Historically, the halibut harvest in Area 2A has been almost entirely a commercial longline fishery. In recent years, the treaty Indian tribes have sought to develop a commercial halibut fishery. The treaty Indian commercial catch has risen from 17,000 lbs. in 1986 to nearly 50,000 lbs. in 1987. Additionally, the non-Indian recreational harvest has undergone a dramatic increase in the past five years, taking an estimated 461,000 lbs (44% of total halibut catch in Area 2A) in 1987. Together, the treaty Indian catch and the recreational catch are now at least equal in weight to the non-Indian commercial catch. In 1987, for the first time, the fishing power of the commercial, recreational, and Indian fisheries combined to substantially exceed the maximum sustainable yield of 800,000 pounds (lbs) set by the IPHC. A rapidly growing recreational catch, especially in the state of Washington, more than doubled the pre-season projections resulting in a total catch for all three groups of 1,050,700 lbs. Thus, the total catch must be reduced to meet conservation goals established by the IPHC. To do this it has become necessary to allocate the halibut catch among the three user groups.

The Under Secretary of Commerce, in compliance with the Northern Pacific

Halibut Act, has directed the Pacific and North Pacific Fishery Management Councils to allocate halibut catches should such allocations be necessary. In compliance with this directive, the PFMC has initiated development of a catch sharing plan for Area 2A. The process for developing the allocation plan has involved State, Federal, and treaty Indian fishery managers and technicians, user group representatives and the general public.

Three public workshops were held at Newport, OR, and Olympia and Port Angeles, WA, seeking input from user groups and the public. Several meetings were held by State, Federal, and tribal fishery managers to develop a consensus plan for consideration by the PFMC.

Establishment of the total allowable catch (TAC) is the responsibility of the IPHC. The TAC for Area 2A will not be finally established until the IPHC annual meeting in late January, 1988. The IPHC is expected to develop a range for the TAC. The proposed plan specifies that the harvest management goal for the combined tribal and non-tribal catch proposed by the PFMC is the midpoint of the IPHC's TAC range. The proposed plan distributes the TAC between Indian and non-Indian fisheries for 1988, only. It distributes the TAC between non-Indian commercial and recreational fisheries for 1988 and 1989, only. Beyond these dates the proposed plan sets no precedent for management goals and actions in subsequent years. Additional specifics of the proposed plan are as follows:

1. Treaty Indian commercial fishing will commence April 1, 1988 and terminate October 31, 1988, using hook and line gear only, with a 32-inch minimum size limit. Ceremonial and subsistance fishing may commence on February 1, 1988, or as soon afterward as regulations can be promulgated, and will terminate December 31, 1988, with no minimum size limit. A daily ceremonial and subsistence catch limit of two fish per fisherman will apply only from February 1 through March 31, 1988 and November 1 through December 31, 1988. Under the PFMC plan, a reserve will be established which is equal to the difference between the midpoint and the upper limit of the TAC range. This reserve may be taken by the treaty Indian fisheries, if necessary, to permit them to continue fishing throughout their season.

2. Non-Indian fisheries will be allowed to harvest poundage equal to the midpoint of the IPHC TAC range minus the estimated treaty Indian catch. This amount will be divided 55 percent for the commercial catch and 45 percent for the recreational fishery. If the TAC midpoint minus the estimated treaty Indian catch equals more than 600,000 lbs., the amount in excess will be divided 60 percent for the commercial harvest and 40 percent for the recreational. The commercial quota will apply to all of Area 2A with no subarea quotas; however, the Oregon share of the recreational catch quota shall not be less than 60,000 lbs.

After receiving and considering public comment, the PFMC will again review its proposed catch sharing plan and will recommend a final plan to the Secretary of Commerce to be forwarded to the IPHC for implementation. Specific regulations to implement the final plan will be developed by IPHC consistent with its responsibilities under the international convention.

Classification

This proposed catch sharing plan is published with a request for public comments as a general statement of agency policy which does not require notice and comment rulemaking under the Administrative Procedures Act at 5 U.S.C. 553(b)(A). As such, the Regulatory Flexibility Act does not apply. A regulatory impact review prepared for this proposed action to fulfill the requirements of E.O. 12291 concludes that actions taken under the proposed plan are not "major" and a Regulatory Impact Analysis is not required. An Environmental Assessment (EA) prepared for this proposed action in accordance with the National Environmental Policy Act analyzes the biological and physical impacts of the proposal catch sharing plan. On the basis of this EA, the PFMC concluded that action taken under the plan will not have any significant impact on the human environment. Copies of the environmental assessment and regulatory impact review are available at the address above. The PFMC has determined that this action is consistent to the maximum extent practicable with applicable State coastal zone management programs as required.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Authority: 5 U.S.T. 5; T.I.A.S. 2900; 16 U.S.C. 773–773K.

Dated: December 30, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87–30205 Filed 12–30–87; 5:06 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 53, No. 2
Tuesday, January 5, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by the Office of Management and Budget

January 1, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information.

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

Animal and Plant Health Inspection Service

Gypsy Moth—Outdoor Household Articles

On occasion

Individuals or households; Businesses or other for-profit; 27,221 hours; 163,000 responses; not applicable under section 3504(h)

Cheryl Jenkins (301) 436–5030

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 88–70 Filed 1–4–88; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Herbicide Use for Weed Control; Deerlodge National Forest; Butte, MT; Intent To Prepare Supplement to Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare a supplement to the 1987 Deerlodge National Forest Noxious Weed Control Program Environmental Impact Statement. The supplement will document the analysis of proposals to use herbicides for noxious weed control within the Rock Creek drainage on the Philipsburg District, and on other new project areas scattered across the Forest.

A range of alternatives will be considered including alternate methods of weed control and a no action alternative.

Federal, state, and local agencies; other individuals; and organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. The process will include:

1. Identification of potential issues.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

4. Determination of potential cooperating agencies and assignment of responsibilities.

Frank Salomonsen, Forest Supervisor, Deerlodge National Forest, Butte, Montana is the responsible official.

The analysis is expected to take about five months. The draft environmental impact statement should be available for public review by February 1988. The final environmental impact statement is scheduled to be completed by April, 1988.

Written comments and suggestions concerning the analysis should be sent to Frank Salomonsen, Deerlodge National Forest, Butte, Montana 59701, by January 31, 1988.

Questions about the proposed action and environmental impact statement supplement should be directed to Dave Ruppert, Soil Scientist, Deerlodge National Forest, phone (406) 496–3368, or Howard Challinor, Supervisory Forester, Philipsburg District, phone (406) 859–3211.

Date: December 16, 1987.

Frank E. Salomonsen,

Forest Supervisor

[FR Doc. 88–71 Filed 1–4–88; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Certification of Central Filing System

The Statewide central filing system of New Mexico is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by the Honorable Rebecca Vigil-Giron, Secretary of State, for farm products produced in that State as follows:

Cattle—beef	Cherries
Cattle—dairy	Grapes
Sheep	Raspberries
Goats	Plums
Hogs	Peaches
Horses	Pears
Llamas	Melons
Poultry	Nectarines
Bees	Apricots
Fish	Peanuts
Milk	Pecans
Eggs	Pistachios
Honey	Pinon
Manure	Lettuce
Wool	Onions
Mohair	Chile
Pelts	Squash
Hides	Sweet Corn
Wheat	Asparagus
Sorghum	Spinach
Corn	Tomatoes
Cotton	Turnips
Sugar Beets	Cabbage
Oats	Cucumbers
Barley	Green Beans
Triticale	Pimiento
Alfalfa Hay	Sweet Bell Pepper
Rye	Broccoli
Soybeans	Cauliflower
Millet	Peas
Grass Hay	Potatoes
Sunflower	Pinto Beans
Apples	Sweet Potatoes

Okra	Seeds
Carrots	Flowers
Leaf Lettuce (red and green)	Nursery Crops
Blue Corn	Sod
Pop Corn	Crambe
Pumpkins	Herbs
Christmas Trees	Spices

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), P.L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.176(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: December 29, 1987.

B. H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 88–72 Filed 1–4–88; 8:45 am]

BILLING CODE 3410-KD-M

Rural Electrification Administration

KAMO Electric Cooperative, Inc.; Finding of No Significant Environmental Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact with respect to proposed financing assistance to KAMO Electric Cooperative, Inc. (KAMO), of Vinita, Oklahoma, for the construction of 161 kV transmission facilities in Cedar and Vernon Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment and KAMO's Borrower's Environmental Report (BER) may be reviewed in the office of Director, Southeast Area—Electric, Room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8434, or at the office of KAMO Electric Cooperative, Inc., (Mr. Dean Sanger, Manager), P.O. Box 577, Vinita, Oklahoma 74301, telephone (918) 256–5551, during regular business hours.

SUPPLEMENTARY INFORMATION: REA, in connection with a request for financing assistance from KAMO, has reviewed the BER submitted by KAMO and has determined that it represents an accurate assessment of the environmental impact of the proposed project. The project consists of a 161 kV transmission line from the existing 161 kV Stockton Substation in Cedar County, Missouri, to the proposed 161/69 kV Camp Clerk Substation which is approximately 30 miles west of Stockton, Missouri in Vernon County, Missouri. Missouri Public Service Company (MO PUB) will intertie with KAMO at the Camp Clark Substation and contruct 15 miles of 161 kV transmission line into Nevada in Vernon County, Missouri. Since the MO PUB's line is dependent on the KAMO project, it has been covered in REA's environmental assessment. Based upon KAMO's BER, REA prepared an Environmental Assessment concerning the proposed project and its impacts.

The BER and EA adequately consider potential impacts of the proposed project on resources, including threatened and endangered species, prime farmlands, cultural resources, wetlands, floodplains, water quality, air quality and the health and safety of humans and livestock. The transmission line may cross floodplain, wetland and prime farmland areas. The Camp Clerk Substation will not be located in any of these areas. No practicable transmission line alternative that completely avoids floodplains, wetlands, or prime farmland could be found.

Alternatives considered include no action, and engineering alternatives to meet the needs of KAMO's consumers. After reviewing these alternatives, REA determined that the proposed project is an environmentally acceptable alternative because it best meets KAMO's needs with a minimum of adverse impacts.

REA has independently evaluated the proposed project and has concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850 Rural Electrification Loans and Loan Guarantees.

Date: December 30, 1987.

Harold V. Hunter,

Administrator.

[FR Doc. 88–43 Filed 1–4–88; 8:45 am]

BILLING CODE 3410-15-M

COMMISSION ON CIVIL RIGHTS

Alabama Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 on January 20, 1988, at the Ramada Inn Civic Center Plaza, 901 21st Street North, Birmingham, Alabama. The purpose of the meeting is to discuss current civil rights issues in the State and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Rodney Max, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 23, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–36 Filed 1–4–88; 8:45 am]

BILLING CODE 6335-01-M

Vermont Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 10:30 a.m. on January 18, 1988, in the Governor's Conference Room on the fifth floor of the Pavilion Office Buiding, 109 State Street, Montpelier, Vermont, recess at 12:00, and reconvene at 12:15 in the Pavilion Office Buiding Lobby for ceremonies commemorating Dr. Martin Luther King, Jr.

The purposes of the meeting are to plan activities for a meeting in March 1988 and to discuss the Advisory Committee's report entitled Civil Rights Enforcement in Vermont. The report is based upon information on civil rights statutes and enforcement mechanisms obtained during a September 1986 meeting which was addressed by Governor Madeline M. Kunin, State Supreme Court Chief Justice Frederick Allen, and other representatives of State and local governments and the private sector.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Members Samuel B. Hand (802/656–3180) or Eloise Hedbor (802/

372–6917) in Vermont or John I. Binkley, Director of the Eastern Regional Division (202/523–5264; TDD 202/376–8117) in Washington, D.C. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Dvision at least five (5) working days before the scheduled date of the meeting. The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, December 18, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–37 Filed 1–4–87; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene public meetings at the Ramada Hotel, 53203 West Kennedy Boulevard, Tampa, FL, of its Shrimp Advisory Panel, its Shrimp Scientific and Statistical Committee, and its Standing Scientific and Statistical Committee, to review the 1987 Texas closure, social and economic surveys of the impacts of the closure, and a shrimp stock assessment. The public meeting of the Shrimp Advisory Panel will convene January 12, 1988, from 8:30 a.m. to 5 p.m.; the public meeting of the Shrimp Scientific and Statistical Committee and Standing Scientific and Statistical Committee will convene January 13, 1988, from 8:30 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: December 30, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–77 Filed 1–4–88; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting at the Kings Grant Inn, Route 128, Danvers, MA, to discuss reports of the scallop, large pelagics, bluefish, groundfish, and environmental affairs committees, and an ad hoc committee report on saltwater licenses and user fees. The public meeting will convene January 13, 1988, at 1:30 p.m., and will adjourn in the afternoon of January 14 after agenda items have been completed. Also on January 14 the Council will convene a brief closed session (not open to the public) to discuss the Council's personnel policy.

For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231–0422.

Dated: December 29, 1987.

Richard H. Schaefer,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–35 Filed 1–4–88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit and Restraint Period for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

December 31, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to amend the current import restraint limit for cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Costa Rica and exported during the new restraint period which began on June 1, 1987 and extends through December 31, 1987.

Background

A CITA directive dated July 6, 1987 was published in the **Federal Register** (52 FR 25900) which announced the establishment of an import restraint limit for cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Costa Rica and exported to the United States during the period which began on May 3, 1987 and extends through December 31, 1987.

A further directive dated December 11, 1987 (52 FR 47744) amended the July 6, 1987 directive to establish a twelve-month limit for Categories 340/640 for the period which began on May 3, 1987 and extends through May 2, 1988.

During consultations held between the Governments of the United States and Costa Rica, agreement was reached on a new Bilateral Textile Agreement, effected by exchange of notes dated November 25 and December 19, 1987, to establish a specific limit for cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Costa Rica and exported during the new restraint period which began on June 1, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–30210 Filed 12–31–87; 12:40 pm]

BILLING CODE 3510-DR-M

Announcement of an Import Limit and Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

December 31, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, and pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986) and 52 FR 26057 (July 11, 1987), has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish an import restraint limit and guaranteed access level for cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Costa Rica and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988.

Background

During consultations held between the Governments of the United States and Costa Rica, agreement was reached to establish a new Bilateral Textile Agreement, effected by exchange of notes dated November 25 and December 19, 1987, concerning cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1988 and extends through December 31, 1988. Under the terms of section 204 of the Agricultural Act of 1956, as amended, and the Bilateral Textile Agreement, as translated to the new category system, CITA will establish a specific limit for cotton and man-made fiber textile products in Categories 340/640 for the period beginning on January 1, 1988 and extending through December 31, 1988.

The new agreement also establishes a guaranteed access level, under the Special Access Program, for certain properly certified textile products in Categories 340/640 which are assembled in Costa Rica from fabric formed and cut in the United States and exported from Costa Rica during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988 (see 52 FR 43930).

A description of the textile categories in terms of T.S.U.S.A. numbers was published n the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annonated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 31, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated Novemer 25 and December 17, 1987, between the Governments of the United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988, in excess of 450,000 dozen.

To the extent that trade which now falls in Categories 340/640 is within a category limit for the period June 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the level of restraint established for that period. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The import level set forth above is subject to adjustment in the future according to the provisions of the new bilateral agreement on cotton and man-made fiber shirts in Categories 340/640 between the Governments of the United States and Costa Rica which provide, in part, that: (1) carryover and carryforward of 11 percent, with carryover of not more than 6 percent, is available; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustment under the bilateral agreement, referred to above, will be made to you by letter.

Additionally, under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 10, 1986) and 52 FR 26057 (July 11, 1987), has been established, effective on January 1, 1988, a guaranteed access level of 450,000 dozen for properly certified textile products assembled in Costa Rica from fabric formed and cut in the United States in Categories 340/640 which are exported from Costa Rica during the same twelve-month period.

Any shipment for entry under TSUSA 807.0010 which is not accompanied by a valid and correct CBI Export Declaration shall be denied entry unless the Government of Costa Rica authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared as TSUSA 807.0010 but found not to qualify for the Special Access Program may be denied entry into the United States. In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–30209 Filed 12–31–87; 2:02 pm]

BILLING CODE 3510-DR-M

Establishing Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products From Republic of Korea Effective January 1, 1988

December 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Kimbang Pham, International Trade

Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–8041. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman, of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the agreement period which begins on January 1, 1988 and extends through December 31, 1988, in excess of the designated amounts.

Background

Under the terms of section 204 of the Agricultural Act of 1956, as amended, the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea, has been translated to the new category system to establish restraint limits for Categories 200–201, 218–220, 222–229, 300–326, 360–363, 369–0, 400, 410, 414, 464–469, 600–607, 611–622, 624–629, 665–669 and 670–0, as a group (Group I), and within the group individual Categories 201, 218, 219, 220, 229–F, 300/301, 313, 314, 315, 317/326, 320, 363, 410, 604, 611, 613/614, 617, 619/620, 624, 625–629 and parts of 669; Categories 239, 330–354, 359, 431–448, 459, 630–654 and 659, as a group (Group II), and within the group individual Categories 331, 333/334, 335, 336, 337/637, 338/339, 340, 341, 342, 345, 347/348, 350, 351, 352, 353/354/653/654, 359–H, 433/434, 435, 436, 438, 440, 442, 443, 444, 445/446, 447, 448, 459–W, 631, 632, 633/634/635, 636, 638/639, parts of 640, 641, 642, 643, 644, 645/646, 647/648, 649, 650 and parts of 659; Categories 831–844 and 847–859, as a group (Group III), and within the group individual Categories 835, 836 and 840; individual Categories 845 and 846 in Group IV; and Categories 369–L, 670–L/870, as a group (Group VI), and within the group individual Categories 369–L, 670–L/870, 670–L and 870, produced or manufactured in Korea and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 30, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended and extended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 1988 and extending through December 31, 1988, in excess of the following restraint limits:

Category	12-month restraint limit
Group I:	
200–201, 218–220, 222–229, 300–326, 360–363, 369–0 [1], 400, 410, 414, 464–469, 600–607, 611–622, 624–629, 665–669, and 670–0 [2], as a group.	434,304,105 square yards equivalent.
Sublevels within Group I:	
201	2,837,038 pounds.
218	12,450,827 square yards.
219	8,522,676 square yards.
220	4,547,173 square yards.
229–F [3]	715,045 pounds.
300/301	5,405,837 pounds.
313	51,918,002 square yards.
314	26,022,697 square yards.
315	23,665,033 square yards.
317/326	17,344,818 square yards.
363	1,742,235 numbers.
410	4,659,336 square yards.
604	620,760 pounds.
611	2,432,004 square yards.
613/614	7,707,634 square yards.
617	5,698,554 square yards.
619/620	99,663,203 square yards.
624	9,445,292 square yards.
669–C [4]	2,127,778 pounds.
669–P [5]	3,959,930 pounds.
669–T [6]	7,815,231 pounds.
Subgroup within Group I:	
625–629, as a group.	12,693,849 square yards.
Group II:	
239, 330–354, 359, 431–448, 459, 630–654, and 659, as a group.	687,274,998 square yards equivalent.
Sublevels within Group II:	
331	513,338 dozen pairs.
333/334	73,182 dozen.
335	74,311 dozen.
336	45,258 dozen.
337/637	68,291 dozen of which not more than 44,389 dozen shall be in Category 337 and not more than 44,389 dozen shall be in Category 637.
338/339	769,053 dozen.
340	260,338 dozen.
341	187,775 dozen.
342	76,459 dozen.

Category	12-month restraint limit
345	93,053 dozen.
347/348	337,475 dozen.
350	13,162 dozen.
351	115,718 dozen.
352	140,716 dozen.
353/354/653/654	229,637 dozen.
359-H [7]	4,469,096 pounds.
433/434	17,284 dozen of which not more than 13,196 dozen shall be in Category 433 and not more than 6,768 dozen shall be in Category 434.
435	31,600 dozen.
436	13,377 dozen.
438	63,437 dozen.
440	213,380 dozen.
442	45,208 dozen.
443	322,056 numbers.
444	49,260 numbers.
445/446	52,204 dozen.
447	84,458 dozen.
448	31,803 dozen.
459-W [8]	189,668 pounds.
631	237,596 dozen pairs.
632	1,803,792 dozen pairs.
633/634/635	1,433,459 dozen of which not more than 181,068 dozen shall be in Category 633, not more than 834,111 dozen shall be in Category 634 and not more than 633,297 dozen shall be in Category 635.
636	226,281 dozen.
638/639	5,611,915 dozen.
640-D [9]	3,809,916 dozen of which not more than 1,306,500 dozen shall be in Category 640-DY [10].
640-O [11]	2,571,834 dozen of which not more than 2,170,869 dozen shall be in Category 640-OY [12].
641	976,845 dozen of which not more than 37,505 dozen shall be in Category 641-Y [13].
642	82,285 dozen.
643	737,064 numbers.
644	1,086,144 numbers.
645/646	3,402,457 dozen.
647/648	1,191,223 dozen.
649	526,102 dozen.
650	19,260 dozen.
659-C [14]	460,168 pounds.
659-H [15]	2,511,648 pounds.
659-S [16]	312,298 pounds.
Group III: 831-844 and 847-859, as a group.	21,564,565 square yards equivalent.
Sublevels with Group III:	
835	27,271 dozen.
836	75,487 dozen.
840	116,153 dozen.
Group IV: 845	2,312,744 dozen.
846	809,847 dozen.
Group VI: 369-L [17], 670-L/870 [18], as a group.	62,934,658 square yards equivalent.
Sublevels within Group VI:	
369-L	525,313 pounds.
670-L/870	32,320,800 pounds of which not more than 27,316,250 pounds shall be in Category 670-L and not more than 6,060,150 pounds shall be in Category 870.

[1] In Category 369-0, all TSUSA numbers except 706.3210, 706.4130 and 706.4135.
[2] In Category 670-0, all TSUSA numbers except 706.3415, 706.3650 and 706.4111.
[3] In Category 229-F, only TSUSA numbers 355.4520 and 355.4530.
[4] In Category 669-C, only TSUSA numbers 348.0065, 348.0075, 348.0565 and 348.0575.
[5] In Category 669-P, only TSUSA number 385.5300.
[6] In Category 669-T, only TSUSA numbers 386.1105 and 389.6210.
[7] In Category 359-H, only TSUSA numbers 702.0600 and 702.1200.
[8] In Category 459-W, only TSUSA numbers 702.7500 and 702.8000.
[9] In Category 640-D, only TSUSA numbers 381.3132, 381.3134, 381.3558, 381.6972, 381.8666, 381.9535, 381.9540 and 381.9968.
[10] In Category 640-DY, only TSUSA numbers 381.3132 and 381.9535.
[11] In Category 640-O, only TSUSA numbers 381.3142, 381.3144, 381.3152, 381.3154, 381.3333, 381.9305, 381.9400, 381.9547, 381.9549, 381.9550, 381.9844, 384.2306, 384.2313 and 384.9127.
[12] In Category 640-OY, only TSUSA numbers 381.3142, 381.3152, 381.9547, 381.9550 and 384.2306.
[13] In Category 641-Y, only TSUSA numbers 384.2302, 384.2304, 384.2307, 384.9110 and 384.9120.
[14] In Category 659-C, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.
[15] In Category 659-H, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.
[16] In Category 659-S, only TSUSA numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1700, 384.2339, 384.8300, 384.8400 and 384.9353.
[17] In Category 369-L, only TSUSA numbers 706.3210, 706.3650 and 706.4111.
[18] In Category 670-L, only TSUSA numbers 706.3415, 706.4130 and 706.4135.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period January 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall, be charged against the levels of restraint established for such goods during that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The 1988 levels are subject to adjustment according to the provisions of the Bilateral Textile Agreement of November 21 and December 4, 1986, as amended and extended, which provide, in part, that: (1) Group limits, specific limits and sublimits may be exceeded by designated percentages for swing, carryforward and/or carryover. No carryforward will be available in the final agreement year, and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any adjustment under the foregoing provisions will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30202 Filed 12-31-87; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Philippines Effective January 1, 1988

December 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Reports which are posted on the bulletin boards of each Customs port of call (202) 535-6735. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile and apparel products in Groups I and II, produced or manufactured in the

Philiphines and exported during 1988, which are in excess of the specific limits.

Background

Pursuant to its authority under section 204 of the Agricultural Act of 1956, as amended, and the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines, as translated to the new category system, the Committee for the Implementation of Textile Agreements will establish limits for cotton, wool and man-made fiber apparel and non-apparel products in Categories 239, 331, 333/334, 335, 336, 337/637, 338/339, 340/640, 341/641, 342/642, 345, 347/348, 351/651, 352/652, 369-S (shoptowels), 431, 433, 443, 445/446, 447, 604, 631, 633, 634, 635, 636, 638/639, 643, 645/646, 647/648, 649, 650, 659-H (headwear) (Group I); and a limit for cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel products in Categories 200, 201, 218–229, 300–326, 330, 332, 349, 350, 353, 354, 359, 360–363, 369-O (other), 400–429, 432, 434–442, 444, 448, 459, 464–469, 600–603, 606–629, 630, 632, 644, 653, 654, 659-O (other, 665–670 and 831–859, as a group (Group II), produced or manufactured in the Philippines and exported during the twelve-month period which begins on January 1, 1988 and extends through December 31, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist on in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 30, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel products in the following categories, produced or manufactured in the Philippines and exported during the period beginning on January 1, 1988 and extending through December 31, 1988, in excess of the following restraint limits:

Category	Twelve-month restraint limit
Group I	
239	12,540,000 pounds.
331	795,000 dozen pairs.
333/334	147,677 dozen of which not more than 21,200 dozen shall be in Category 333.
335	96,123 dozen.
336	349,800 dozen.
337/637	1,060,000 dozen.
338/339	1,166,000 dozen.
340/640	651,028 dozen of which not more than 358,065 dozen shall be in shirts made with two or more colors in the warp and/or filling in Category 340-YD/640-YD [1].
341/641	576,172 dozen.
342/642	291,500 dozen.
345	90,100 dozen.
347/348	1,060,000 dozen.
351/651	318,000 dozen.
352/652	1,272,000 dozen.
369-S [2]	1,007,000 pounds.
431	153,015 dozen pairs.
433	3,013 dozen.
443	36,432 numbers.
445/446	24,884 dozen.
447	6,919 dozen.
604	2,354,946 pounds.
631	2,597,000 dozen pairs.
633	15,900 dozen.
634	233,088 dozen.
635	269,130 dozen.
636	911,600 dozen.
638/639	1,197,800 dozen.
643	508,800 numbers.
645/646	525,000 dozen.
647/648	636,000 dozen.
649	4,474,433 dozen.
650	55,014 dozen.
659-H [3]	1,272,000 pounds.
Group II	
200, 201, 218–229, 300–326, 330, 332, 349, 350, 353, 354, 359, 360–363, 369-O [4], 400–429, 432, 434–442, 444, 448, 459, 464–469, 600–603, 606–629, 630, 632, 644, 653, 654, 659-O [5], 665–670 and 831–859, as a group.	73,252,179 square yards equivalent.

[1] In Category 340-YD/640-YD, only TSUSA numbers 381.0522, 381.5637, 381.5610, 381.5625, 381.5660, 381.5500, 381.3132, 381.3142, 381.3152, 381.9535, 381.9547, 381.9550 and 384.2306.

[2] In Category 369-S, only TSUSA number 366.2840.

[3] In Category 659-H, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

[4] In Category 369-O, all TSUSA numbers except 366.2840.

[5] In Category 659-O, all TSUSA numbers except 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

To the extent that trade which now falls in the foregoing categories is within a category limit for the period January 1, 1987 through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restraint established for such goods during that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30203 Filed 12-31-87; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey Effective on January 1, 1988

December 31, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343–6582. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during 1988, in excess of the designated limits.

Background

Under the terms of section 204 of the Agricutural Act of 1956, as amended, and the Bilateral Cotton and Man-Made Fiber Textile Agreement of October 18, 1985, as amended, between the Governments of the United States and the Republic of Turkey, and as translated to the new category system, CITA establishes import limits for certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported in the case of Category 200, 219, 300/301, 313, 317/326, 335, 337, 339, 340/640, 341, 347, 348, 350, 361, 369 and 604 during the periods beginning of January 1, 1988 and extending through June 30, 1988. Category 342/642, currently filled, shall remain embargoed through May 26, 1988, unless a different solution is agreed upon in consultations with the Government of Turkey.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 31, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement of October 18, 1985, as amended, between the Governments of the United States and Turkey; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the indicated periods, in excess of the following restraint limits:

Category	Import restraint limit—January 1, 1988–June 30, 1988
200	519,400 pounds.
219	5,654,643 square yards.
300/301	3,445,000 pounds.
313	7,860,408 square yards.
317/326	6,625,000 square yards of which not more than 1,060,000 square yards shall be in Category 326.
335	38,750 dozen.
337	37,500 dozen.
339	227,386 dozen.
340/640	234,000 dozen of which not more than 117,000 dozen shall be in Categories 340-Y/640-Y.[1]
341	226,200 dozen of which not more than 93,600 dozen shall be in Category 341-Y [2].
347	302,155 dozen of which not more than 135,000 dozen shall be in Category 347-T [3].
348	289,346 dozen of which not more than 144,673 dozen shall be in Category 348-T [4].
350	43,990 dozen.
361	201,400 numbers.
369-S [5]	768,500 pounds.
604	613,915 pounds.

[1] In Categories 240-Y/640-Y, only TSUSA numbers 381.0522, 381.3132, 381.3142, 381.3152, 381.5500, 381.5610, 381.5625, 381.5637, 381.5660, 381.9535, 381.9547 and 381.9550.

[2] In Category 341-Y, only TSUSA numbers 384.0505, 384.0511, 384.0512, 384.4608, 384.4610, 384.4612 and 384.4788.

[3] In Category 347-T, only TSUSA numbers 376.5435, 381.0005, 381.0252, 381.0254, 381.0429, 381.0540, 381.0542, 381.0546, 381.0832, 381.3509, 381.3930, 381.3940, 381.6220, 381.6230, 381.6240, 381.6250, 381.6260, 381.6270, 381.6611, 381.6924, 381.8510, 381.8634, 381.9930 and 791.7418.

[4] In Category 348-T, only TSUSA numbers 376.5440, 384.0015, 384.0262, 384.0263, 384.0265, 384.0266, 384.0267, 384.0269, 384.0350, 384.0608, 384.0612, 384.0614, 384.0618, 384.0711, 384.0712, 384.0722, 384.0724, 384.0726, 384.0729, 384.0731, 384.0733, 384.0734, 384.0736, 384.0965, 384.2706, 384.2751, 384.3026, 384.3027, 384.3029, 384.3035, 384.3038, 384.3042, 384.3044, 384.3466, 384.4520, 384.4647, 384.4648, 384.4651, 384.4652, 384.4735, 384.4740, 384.4746, 384.4747, 384.4750, 384.4755, 384.4763, 384.4764, 384.4765, 384.4770, 384.4774, 384.4776, 384.5275, 384.5422, 384.5526, 384.7716, 384.7815, 384.9527 and 791.7420.

[5] In Category 369-S, only TSUSA number 366.2840.

To the extent that trade which now falls in the foregoing categories is within a category limit for the periods beginning January 1, 1987 and July 1, 1987, and extending through December 31, 1987, such trade, to the extent of any unfilled balances, shall be charged against the levels of restaint established for such goods during those periods. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The restraint limits set forth above are subject to adjustments pursuant to the provisions of the bilateral agreement of October 18, 1985, as amended, between the Governments of the United States and the Republic of Turkey, which provide, in part, that specific limits may be increased by designated percentages for swing, carryover and carryforward; however, carryforward will not be available in the final twelve-month agreement period.

The limit for Categories 342/642 for the period of January 1, 1988 through May 26, 1988 shall be zero.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that

these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30214 Filed 12-31-87; 2:18 pm]

BILLING CODE 3510-DR-M

Amendment of Import Limits and Restraint Periods for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

December 31, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1988. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to amend the current restraint limits and restraint periods for certain cotton and man-made fiber textile products, produced or manufactured in Turkey.

Background

CITA directives dated June 22, 1987, as amended, and November 3, and December 30, 1987, were published in the **Federal Register** (52 FR 23882 and 52 FR 43097) which established import restraint limits for certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the twelve-month period which began, in the case of Categories 300/301, 317, 319, 335, 337, 339, 340/640, 341, 347, 348, 350, 361, 369-S, 604 and 605-H, on July 1, 1987 and extends through June 30, 1988 and in the case of Categories 342/642, on May 27, 1987 and extends through May 26, 1988.

Pursuant to its authority under section 204 of the Agricultural Act of 1956, as amended, CITA will amend the current import limits for certain cotton and man-made fiber textile products in Categories 300/301, 317, 319, 335, 337, 339, 340/640, 341, 347, 348, 350, 361, 369-S, 604 and 605-H, produced or manufactured in the Republic of Turkey and exported during the new restraint period which began on July 1, 1987 and extends through December 31, 1987. There will be 100 percent carryover and 100 percent carryforward between this restraint period and the one which begins on Janaury 1, 1988. The limit for Categories 342/642 has been amended for the new restraint period which began on May 27, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule of the Tariff Schedules of the United States Annotated (1987).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 31, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of June 22, 1987, as amended, November 3, 1987 and December 3, 1987 issued to you by the Chairman of the Committee for the Implementation of Textile Agreements concerning imports of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported to the United States during the periods which began, in the case of Categories 300/301,317, 319, 335, 337, 339, 340/640, 341, 347, 348, 350, 361, 369-S, 604 and 605-H, on July 1, 1987 and extends through June 30, 1988; and, in the case of Categories 342/642, on May 27, 1987 and extends through May 26, 1988.

Effective on January 1, 1988, the directives of June 22, 1987, as amended, November 3, 1987 and December 3, 1987 are amended to include amended restraint limits for the following categories, produced or manufactured in Turkey and exported during the new restraint periods as indicated below.

Category	Import restraint limit—July 1, 1987-December 31, 1987
300/301	3,445,000 pounds.
317	6,625,000 square yards of which not more than 1,060,000 square yards shall be in Category 371-S [1].
319	5,830,000 square yards.
335	38,955 dozen.
337	37,500 dozen.
339	230,000 dozen.
340/640	234,000 dozen of which not more than 117,000 dozen shall be in Categories 340-Y/740-Y [2].
341	226,200 dozen of which not more than 93,600 dozen shall be in Category 341-Y [3].
347	302,155 dozen of which not more than 135,000 dozen shall be in Category 347-T [4].
348	291,500 dozen of which not more than 145,750 dozen shall be in Category 348-T [5].
350	43,990 dozen.
361	201,400 numbers.
369-S [6]	768,500 pounds.
604	613,915 pounds.
605-H [7]	519,400 pounds.

[1] In Category 317-S, TSUSA items 320._____ through 331._____, with statistical suffixes 50, 87 and 93.

[2] In Category 340-Y/640-Y, 381.0522, 381.3132, 381.3142, 381.3152, 381.5500, 381.5610, 381.5625, 381.5637, 381.5660, 381.9535, 381.9547 and 381.9550.

[3] In Cateogry 341-Y, only TSUSA numbers 384.4608, 384.4610, 384.4612 and 384.4788.

[4] In Category 347-T, only TSUSA numbers 376.5435, 381.0005, 381.0252, 381.0254, 381.0429, 381.0540, 381.0542, 381.0546, 381.0832, 381.3509, 381.3930, 381.3940, 381.6220, 381.6230, 381.6240, 381.6250, 381.6260, 381.6270, 381.6611, 381.6924, 381.8510, 381.8634, 381.9930 and 791.7418.

[5] In Category 348-T, only TSUSA numbers 376.5440, 384.0015, 384.0262, 384.0263, 384.0265, 384.0266, 384.0267, 384.0269, 384.0350, 384.0608, 384.0612, 384.0614, 384.0618, 384.0711, 384.0712, 384.0722, 384.0724, 384.0726, 384.0729, 384.0731, 384.0733, 384.0734, 384.0736, 384.0965, 384.2706, 384.2751, 384.3026, 384.3027, 384.3029, 384.3035, 384.3038, 384.3042, 384.3044, 384.3466, 384.4520, 384.4647, 384.4648, 384.4651, 384.4652, 384.4735, 384.4740, 384.4746, 384.4747, 384.4750, 384.4755, 384.4763, 384.4764, 384.4765, 384.4770, 384.4774, 384.4776, 384.5275, 384.5422, 384.5526, 384.7716, 384.7815, 384.9527 and 791.7420.

[6] In Category 369-S, only TSUSA number 366.2840.

[7] In Category 605-H, TSUSA numbers 310.9310 and 310.9320.

Category	Import restraint limit—May 27, 1987-December 31, 1987
342/642	119,550 dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption

to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30213 Filed 12-31-87; 2:18 pm]

BILLING CODE 3510-DR-M

Establishment and Adjustment of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

December 31, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343-6582. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish new import limits for cotton and man-made fiber textile products in Categories 337, 347 and 604 and to adjust the current limit for cotton textile products in Category 300/301, produced or manufactured in Turkey and exported to the United States during the period July 1, 1987 through June 30, 1988.

This letter will be superseded, on January 1, 1988 by two other letters which subdivide these July 1, 1987-June 30, 1988 restraints into two periods, one under the current category system, and one under the new category system.

Background

A CITA directive dated December 10, 1986 was published in the Federal Register (51 FR 45031) which established import restraint limits for man-made textile products in Category 604-A, among others, produced or manufactured in Turkey and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

A further CITA directive dated June 22, 1987 (52 FR 23882) established import restraint limits for cotton and man-made fiber textile products, including Categories 300/301 and 604-O, produced or manufactured in Turkey and exported during the twelve-month period which began on July 1, 1987 and extends through June 30, 1988.

During consultations held October 14-16, 1987 between the Governments of the United States and the Republic of Turkey, agreement was reached to further amend their Bilateral Cotton and Man-Made Fiber Textile Agreement of October 18, 1985, as amended and extended, to include specific limits for Categories 300/301, 337, 347, with a sublimit for trousers and slacks in 347-T, and 604, currently 604-A and 604-O, for the period July 1, 1987 through June 30, 1990.

The United States Government has decided to control imports of Categories 300/301, 337, 347, 347-T, and 604 at the agreed levels for the twelve-month period which began on July 1, 1987 and extends through June 30, 1988.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the Federal Register.

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 31, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This directive cancels and supersedes only that portion of the directive of December 10, 1986 issued by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of man-made fiber textile products in Category 604-A,[1] produced or manufactured in Turkey and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

This directive amends, but does not cancel, the directive of June 22, 1987 concerning imports of cotton textile products in Categories 300/301, produced or manufactured in Turkey and exported during the period July 1, 1987 through June 30, 1988.

This directive also cancels and supersedes only that portion of the June 22, 1987 directive which concerns imports of man-made fiber textile products in Category 604-O [2] exported during the twelve-month period which began on July 1, 1987 and extending through June 30, 1988.

Effective on January 1, 1987, the directive of June 22, 1987 is hereby amended to include the following adjusted limit for category 300/301 and new limits for Categories 337, 347 and 604 for the period July 1, 1987 through June 30, 1988.

Category	12-month restraint limit [1]
300/301	6,890,000 pounds.
337	75,000 dozen.
347	604,309 dozen of which not more than 270,000 dozen shall be in category 347-T.[2]
604	1,227,630 pounds.

[1] These limits have not been adjusted to account for any imports exported after June 30, 1987.

[2] In Category 347-T, all TSUSA's in Category 347 except: 381.0530 and 381.6210.

Textile products in Categories 337 and 347 which have been exported to the United States prior to July 1, 1987 shall not be subject to this directive.

Textile products in Category 337 and 347 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The import charges already made to the restraint limit for Category 300/301 are to be retained. There are no charges to be made to the restraint limit for Category 604 for the import period July 1, 1987 through December 1, 1987. Charges for Categories 337 and 347 will be provided in a separate directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] In Category 604-A, only TSUSA number 310.5049.

[2] In Category 604-O, all TSUSA numbers except 310.5049.

Sincerely,

Ferenc Molnar,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-30212 Filed 12-31-87; 2:18 pm]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of the Final Programmatic Environmental Impact Statement for the Chemical Stockpile Disposal Program

AGENCY: Department of the Army, Department of Defense.

Background

The U.S. Congress, Title 14, Part B, section 1412, 1986 Defense Authorization Act (Pub. L. 99-145), directed the Secretary of Defense to carry out the destruction of the U.S. stockpile of lethal chemical agents and munitions by September 30, 1994, in conjunction with the acquisition of binary chemical weapons. The Department of the Army, as Executive Agent for the Department of Defense, is responsible for the disposal of these lethal munitions in a manner which provides protection of public health and safety and which is environmentally acceptable.

On January 28, 1986, the Army published a Supplemental Notice of Intent to prepare a Programmatic Environmental Impact Statement and other appropriate site-specific environmental documents on the potential impacts resulting from the disposal of the entire stockpile of chemical agents/munitions currently in storage within the continental United States (CONUS) as referenced in Pub. L. 99-145.

On July 1, 1986, the Army issued a Draft Programmatic Environmental Impact Statement (DPEIS) for the Chemical Stockpile Disposal Program. The DPEIS included an analysis of the impacts of disposal of the agents and munitions at incineration facilities at eight separate sites, or rail transport to either two regional disposal sites or the national disposal site and subsequent disposal of the agents. The DPEIS also considered the impacts of "no action"; i.e., continue to store the agents and munitions at their current locations.

Action

The Department of the Army announces that the Final Programmatic Environmental Impact Statement (FPEIS) for the disposal of the entire lethal chemical agent stockpile within the continental United States is available for public review and comment. The stockpile to be destroyed is located at eight Army installations: Aberdeen Proving Ground, Maryland; Anniston Army Depot, Alabama; Lexington-Blue Grass Army Depot, Kentucky; Newport Army Ammunition Plant, Indiana; Pine Bluff Arsenal, Arkansas; Pueblo Army Depot Activity, Colorado; Tooele Army Depot, Utah; and Umatilla Army Depot Activity, Oregon.

Five alternatives were assessed in the FPEIS:

(1) On-site disposal by incineration at each of the eight storage installations.

(2) Rail transportation of the stocks to a national disposal center to be established at Tooele Army Depot.

(4) Air transportation of the stocks from Lexington-Blue Grass Army Depot and Aberdeen Proving Ground to Tooele Army Depot for disposal; the remaining stocks would be destroyed at their current storage sites.

(5) Continued storage of the stocks at their current locations, or the "no action" alternative.

Based on a comparative analysis of human health, ecosystem and environmental impacts, and the feasibility and effectiveness of emergency response measures, the on-site disposal alternative is identified as the environmentally preferred alternative. The Army also selects the on-site disposal alternative as its preferred alternative.

The selection of a preferred alternative in the FPEIS does not constitute a final decision. The final programmatic Record of Decision cannot be made for at least 30 days after publication of the FPEIS to allow public review and comment. The FPEIS, as well as comments submitted on the document, will be used by the Army to reach a final programmatic decision.

Following the Record of Decision, site specific environmental documentation will be prepared for each of the eight sites, further detailing the potential impacts of implementing the decision.

Comments on the FPEIS should be submitted to: Program Executive Officer-Program Manager for Chemical Demilitarization, ATTN: AMCPEO-CID, Aberdeen Proving Ground, Maryland 21010-5401. These comments should be received no later than February 8, 1988, for consideration in the Record of Decision. Copies of the document may be obtained by writing to the above address or by calling 301-671-2583.

The Environmental Protection Agency (EPA) will also publish a Notice of Availability for this Final Programmatic Environmental Impact Statement in the **Federal Register.**

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health OASA(I&L).

[FR Doc. 88-63 Filed 1-4-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 26 January 1988.

Times of Meeting: 0800-1600 hours.

Place: Huntsville, AL.

Agenda: The ASB Effectiveness Review of the US Army Missile Command, Research, Development and Engineering Center will meet to discuss actions taken in response to the review findings. This meeting will be open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The Army Science Board Administrative Officer, Sally Warner, may be contacted for futher information at (202) 695-3039 or 695-7046.

Sandra F. Gearhart,

Acting Administrative Officer, Army Science Board.

[FR Doc. 88-12 Filed 1-4-88; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closing Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 14-15 January 1988.

Time of Meeting: 0800-1600 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Committee on Implementing Competitive Strategies will meet to work on the finalization of the written and oral reports. This will include completing the executive summary and making final recommendations. Due to the classification of the report and ensuing discussions, this meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are

so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for futher information at (202) 695–3039 or 695–7046.

Sandra F. Gearhart,

Acting Administrative Officer, Army Science Board.

[FR Doc. 87–17 Filed 1–4–88; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 19–20 January 1988.

Time of Meetings: 0800–1700 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Subgroup on Ballistic Missile Defense (Follow-on) will meet for classified briefings and discussions reviewing matters that are an integral part of or are related to the issue of the study effort. The Subgroup is tasked with a comprehensive review of BMD requirements, technology, and specific critical issues impacting on program development. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sandra F. Gearhart,

Acting Administrative Officer, Army Science Board.

[FR Doc. 88–18 Filed 1–4–88; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 19–21 January 1988.

Time of Meeting: 0900–1700 hours, 19 January 1988; 0800–1030 hours, 20 January 1988; 0800–1600 hours, 21 January 1988.

Place: Ft Lee, VA and Ft Eustis, VA.

Agenda: The Army Science Board Ad Hoc Subgroup for Army Analysis will meet for briefings by analytic agencies and government laboratories to discuss analysis organization and support to the acquisition process. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sandra F. Gearhart,

Acting Administrative Officer, Army Science Board.

[FR Doc. 88–19 Filed 1–4–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Financial Assistance Grant Award to the State of Alaska

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: The DOE, Morgantown Energy Technology Center, in accordance with 10 CFR 600.7(b), gives notice of its plans to award a 5-year grant to the State of Alaska, Department of Natural Resources, Division of Geological and Geophysical Surveys, in the amount of $1,000,000 on a 50/50 cost share basis. Funding will be for 12-month periods beginning on the first anniversary of award.

The DOE has determined that restriction to the State of Alaska is appropriate based upon the following information:

The DOE and the State of Alaska have entered into an agreement relating to fossil energy resource characterization, research and technology development, and technology transfer to advance the application of new technologies to the Alaskan reserves of crude oil, natural gas, heavy oil, tar sand oil, coal, shale oil, methane hydrates, and peat, and may include scientific activities and investigations of underlying environmental concerns.

This project will focus upon the exploration, study, and compilation of data and related research materials on the geometry and physical properties of ice islands and multiyear ice, the conditions and manner under which ice island are formed and released, and the global forces with which multiyear pack ice and ice island interact with offshore structures.

These activities to research the application of new technologies to the arctic fossil energy reserves are in furtherance of the DOE mission and the Alaskan objectives to ensure a continued supply of fossil fuels to the consumer in a safe, economic and environmentally acceptable manner. Since the State of Alaska has been charged with research in support of Alaska resource development, has an ongoing program (facilities, equipment and personnel), and is an integral part of the Alaskan infrastructure involved in resources recovery issues, it is uniquely qualified to carry out the work under this grant. Therefore, it has been determined that it is appropriate to award this grant to the State of Alaska on a restricted eligibility basis.

FOR FURTHER INFORMATION CONTACT: James H. Urbati, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4089, Procurement Request No. 21–88MC25027.000.

Date: December 22, 1987.

Ronald E. Cone,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 88–9 Filed 1–4–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. SA88–2–000]

Enserch Gas Transmission Co., Petition for Adjustment

Issued: December 29, 1987.

On November 27, 1987, Enserch Gas Transmission Company (Enserch) filed with the Federal Energy Regulatory Commission a petition for an adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA). Enserch seeks relief from the Commission's regulations governing transportation rates charged by intrastate pipelines as set forth in 18 CFR 284.123(b)(1)(ii), which allows such charges to equal the effective intrastate transportation rate if the services are comparable. Comparable service has been interpreted to refer to city-gate service.

Enserch requests adjustment from the regulation because it does not render city-gate service. Enserch proposes to charge a maximum rate equal to the rate in its intrastate transportation tariff (Rate Schedule No. 100) on file with the Texas Railroad Commission (TRC) as the applicable rate for transportation under section 311(a)(2) of the NGPA. Enserch states that it is concurrently filing with the TRC a petition seeking approval of the filed tariff as a cost-based rate.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-24 Filed 1-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI88-119-000 and CI88-140-000]

Sunterra Gas Gathering Co.; Applications for Permanent Abandonment and Blanket Limited-Term Certificate of Public Convenience and Necessity With Pregranted Abandonment

December 29, 1987.

Take notice that on November 16, 1987, Sunterra Gas Gathering Company (Sunterra or Applicant), 2444 Louisiana, NE., Albuquerque, New Mexico 87125, a natural gas gathering and successor to Southern Union Gathering Company (Southern Union), filed applications pursuant to section 7 of the Natural Gas Act and § 2.77 of the Commission's Regulations thereunder for authorization to abandon sales to El Paso Natural Gas Company (El Paso) which were originally authorized in Docket Nos. G-7670 and G-7671, and for a blanket limited-term certificate with pregranted abandonment for a period of three years. Sunterra states that effective March 5, 1987, it succeeded to the interests of Southern Union which had been determined to be an independent producer under the Commission's regulations. Applicant states that the contract dated August 31, 1953, which is for sale of gas which is surplus to the needs of Applicant and its affiliates, will terminate December 31, 1987. Applicant states that El Paso has not purchased any gas from Applicant under the contract since February 1985 and has indicated that it does not intend to purchase such gas.

Applicant states that it utilizes its gathering system in the sale of gas to El Paso, and that from the gathering system, Sunterra purchases gas under long-term, take-or-pay contracts from 1,073 wells in the San Juan Basin. Applicant indicates that approximately 38% of the gas covered by the contract is classified under sections 102 and 103 of the NGPA; abandonment authorization is not required for such gas. The remaining gas is classified under various vintages of section 104 post-1974 (23%), large producer 1973-1974 biennium (1%), small producer 1973-1974 biennium (<1%) large producer replacement (13%), small producer replacement (<1%), large producer flowing (18%), small producer flowing (1%), section 106 large producer rollover (1%) and section 108 (4%). The deliverability subject to the abandonment is approximately 93 MMcf/d.

Applicant states that in order to fulfill the purpose of the Sunterra-El Paso contract, El Paso was entitled to purchase all of Sunterra's gas surplus to the needs of Sunterra and its affiliates but was obligated to purchase a volume of gas which, when combined with the needs of Sunterra and its affiliates, would permit Sunterra to purchase from producers ratably with El Paso's purchases from producers in the same fields. Applicant states that El Paso, however, has not purchased any gas from Sunterra under the contract since February 1985, but El Paso has continued to purchase gas from producer in the San Juan Basin, though at reduced levels. Through its actions and numerous verbal communications, Applicant states that El Paso has made clear that it does not intend to purchase gas from Sunterra.

Applicant believes that the portion of the gas which constitutes 'surplus' not purchased by El Paso is not 'dedicated or committed' to interstate commerce and that Sunterra is free to sell such gas to others, including sales in interstate commerce for resale. Acting on that belief, Sunterra states it filed a petition for an order declaring such result in Docket No. GP84-55-000 on September 21, 1984. However, no order has been issued in Docket No. GP84-55-000. While Sunterra states that it does not believe the authorization sought herein is legally required for the reasons described in the petition for declaratory order, the continued uncertainty requires action of some type to resolve this matter.

Sunterra states for nearly three years, El Paso has not purchased any gas from Sunterra, yet according to Sunterra, during this time El Paso has retained a first call on Sunterra's excess gas. Sunterra states it has not been compensated either for the gas not taken or for El Paso's continuing unexercised right to purchase that gas.

Applicant states that approval of the applications will assure that all competitively-priced excess gas on Sunterra's system can be marketed. Sunterra avers the sale of that gas will benefit customers, who will buy it only if it is cheaper than other alternatives, will benefit producers, who will be able to maximize their production and revenues, and will benefit Sunterra, which will be better able to manage its own take-or-pay exposure. Sunterra further asserts that El Paso itself will benefit from the assurance that, after abandonment, it can incur no future liability for failure to take gas from Sunterra.

Applicant also requests a blanket limited-term certificate with pregranted abandonment authorizing Sunterra to sell the gas for resale in interstate commerce. Sunterra requests that such a certificate be effective for a period of three years from the date of its issuance. Sunterra anticipates that its sales will be made at the wellhead, at the inlet or tailgate of the Kutz Processing Plants attached to Sunterra's gathering system or at other points on Sunterra's gathering system. Sunterra states that the sales price will vary with market conditions but will never exceed the maximum lawful price applicable to resellers under § 270.202 of the Commission's Regulations. However, Sunterra states that in Docket No. SA82-16, the Commission approved a gathering allowance of 31.81¢ per MMBtu for sales by Sunterra to El Paso, and other customrs. *Southern Union Gathering Co.*, 21 FERC ¶ 61,305 (1982). Therefore, Sunterra states that under § 270.202(c), if sales are made at the Kutz Processing Plants or other points on Sunterra's gathering system, other than the wellhead, the sales price for such sales may exceed the maximum lawful price otherwise applicable under § 270.202(c) by up to 31.81¢.

Sunterra states that because its sales of gas are likely to be made initially in the spot market, they will be subject to rapid changes with regard to volumes, purchasers, delivery points and other considerations. Therefore, Sunterra requests that the Commission waive its Regulations under Parts 154 and 271 concerning maintenance of rate schedules in order to permit Sunterra to

implement sales without constantly filing and changing rate schedules and blanket affidavits to conform to the conditions of each individual sale.

Additionally, Sunterra requests waiver of the separate billing requirements of § 272.105 of the Commission's Regulations so long as the sales price it charges is less than the alternative maximum lawful price provided in § 271.402(c)(7)(i) of the Regulations plus an amount up to the authorized 31.81¢ gathering allowance, if applicable. Sunterra states that since Section 272.105 of the Regulations is designed to prevent circumvention of the maximum price limitations of the NGPA, and since all contracts under which Sunterra will sell gas under the requested blanket limited-term certificate will necessarily have been executed subsequent to July 18, 1986, the applicable maximum lawful price for gas sold by Sunterra can never be less than the alternative maximum lawful price provided in § 271.402(c)(7)(i) of the Regulations. As long as the total price charged by Sunterra does not exceed the alternative maximum lawful price by more than 31.81¢, Sunterra states that the sale could not possible circumvent the maximum price limitations of the NGPA. In such circumstances, the separate billing required by § 272.105 is, according to Sunterra, an unnecessary and onerous burden which should be eliminated.

Sunterra also requests a waiver of any and all otherwise currently applicable orders, rules, regulations, and reporting requirements, or those which may be promulgated or issued by the Commission, to the extent that such orders, rules, regulations, or reporting requirements are, or may be, inconsistent with the authority sought in these applications.

Finally, Sunterra requests cancellation of its FERC Gas Rate Schedule No. 1 which covers its sales to El Paso.

Since Sunterra states that when El Paso does not take gas from Sunterra, its revenues are reduced and its producers suffer severely reduced takes and resultant reduced cash flow, and Sunterra has requested that its applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to public inspection, andy person desiring to be heard or to make any protest with reference to said applications should, on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-25 Filed 1-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER88-151-000, et al.]

Canal Electric Co., et al.; Electric Rate and Corporate Regulation Filings

December 29, 1987.

Take notice that the following filings have been made with the Commission:

1. Canal Electric Company

[Docket No. ER88-151-000]

Take notice that on December 21, 1987, Canal Electric Company (Canal) tendered for filing a Power Contract which implements the terms of the Capacity Acquisition Agreement (FERC Rate Schedule No. 21) and the NU Units Capacity Acquisition Commitment (FERC Rate Schedule No. 21, Supplement No. 7). Such Power Contract recognizes that Canal has incurred costs associated with the purchase of demand and energy on behalf of Cambridge Electric Light Company and Commonwealth Electric Company. The estimated revenues to Canal under this Power Contract are approximately $7,925,980 for Period I (twelve months ending December 31, 1986). Canal has requested that the Commission's notice requirements be waived pursuant to § 35.11 of the Commission's Regulations in order to allow the tendered rate change to become effective as of May 1, 1987. Further, Canal proposes that its filing be suspended for no more than one day.

Comment date: January 12, 1988, in accordance with Standard Paragraph E at the end of the notice.

2. Central Hudson Gas & Electric Corporation

[Docket No. ER88-152-000]

Take notice that on December 22, 1987, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing as a rate schedule an executed agreement dated November 3, 1987 between Central Hudson and the New York Power Authority (NYPA). The proposed rate schedule provides for Electric Transmission Service and Standby Electric Service for generation associated with NYPA's Ashokan Hydro Electric Generating Plant.

The rate schedule provides for a monthly transmission charge of $1.49 per kilowatt and a standby charge of $8.06 per kilowatt per month during the summer and winter peak periods.

Central Hudson states that a copy of this filing was served on NYPA.

Comment date: Janaury 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas City Power & Light Company

[Docket No. ER88-113-000]

Take notice that on December 21, 1987, Kansas City Power & Light Company (KCPL) tendered for filing an Amendment to its earlier filing in this Docket.

KCPL states that the purpose of this supplement is to respond to a question regarding Schedule A of the Agreement. The Amendment accepts a cap for percentage adders on purchase and resale transactions under Schedule A. The cap is the same as the adder for purchase and resale transactions which the Commission has accepted for other similar transactions by KCPL.

Comment date: Janaury 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER88-147-000]

Take notice that on December 21, 1987, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Nine to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and Florida Power Corporation and a document entitled Schedule TX Operating Agreement Between Florida Power & Light Company and Florida Power Corporation (Rate Schedule FERC No. 61).

FPL states that under Amendment Number Nine, FPL will transmit power and energy for Florida Power Corporation as is required in the implementation of its interchange agreements with the Utility Board of the City of Key West, the Utilities Commission, City of New Smyrna Beach, Florida, the City of Starke, the Fort Pierce Utilities Authority, the City of Homestead, the City of Lake Worth and the City of Vero Beach.

FPL further states that the Schedule TX Operating Agreement defines the methodology used to determine the additional incremental cost under section I.4 of Amendment Number Nine.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment and the proposed Operating Agreement be made effective immediately.

FPL states that copies of the filing were served on Florida Power Corporation.

Comment date: January 12, 1988, in accordance with Standard Paragraph E at the end of this document.

5. Wisconsin Electric Power Company

[Docket No. ER88-149-000]

Take notice that on December 21, 1987, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a Joint Use of Transmission Agreement and a Dispatch Agreement between Wisconsin Electric and Upper Peninsula Power Company (UPPCO). The Joint Use of Transmission Agreement provides for terms, conditions, and procedures under which UPPCO and Wisconsin Electric will mutually employ certain interconnected transmission facilities after Wisconsin Electric's purchase of the Presque Isle Power Plant. The Dispatch Agreement is intended to establish procedures under which UPPCO will provide Wisconsin Electric with dispatching service associated with the generation of the Presque Isle Power Plant. The instant submittal is occasioned by the pending purchase of Presque Isle Power Plant from its owner, Upper Peninsula Generating Company.

Wisconsin Electric requests an effective date concurrent with its closing on the Presque Isle Power Plant scheduled for 11:59 p.m. e.s.t. on December 31, 1987 or as promptly therafter as required regulatory approvals can be obtained. The Company states that UPPCO joins in the requested effective date.

Wisconsin Electric states that UPPCO has filed Certificate of Concurrence to the Joint Use of the Transmission Agreement and Dispatch Agreement between Wisconsin Electric and UPPCO.

Copies of the filing have been served on UPPCO, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

Comment date: January 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Company

[Docket No. ER88-150-000]

Take notice that on December 21, 1987, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing an amendment to the Interconnection Agreement between Wisconsin Electric and Upper Peninsula Power Company (UPPCO). The amendment provides for a new Service Schedule G, under which Wisconsin Electric will sell to UPPCO energy associated with power from the Presque Isle Power Plant. The instant submittal is occasioned by the pending purchase of Presque Isle Power Plant from its owner, Upper Peninsula Generating Company.

Wisconsin Electric requests an effective date concurrent with its closing on the Presque Isle Power Plant which is scheduled for 11:59 p.m. e.s.t. on December 31, 1987 or as promptly thereafter as required regulatory approvals can be obtained. The Company states that UPPCO joins in the requested effective date.

Copies of the filing have been served on UPPCO, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

Wisconsin Electric states that Upper Peninsula Power Company has filed a Certificate of Concurrence to the Amendment to the Interconnection Agreement between Wisconsin Electric and Upper Peninsula.

Comment date: January 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Power Company

[Docket No. ER88-148-000]

Take notice that on December 21, 1987, Duke Power Company (Duke) tendered for filing a revision in its wheeling rate under the Agreement between Duke Power Company and the United States of America, Department of Energy, acting by and through the Southeastern Power Administration (SEPA), dated January 13, 1986 (designated Rate Schedule FERC No. 283), as supplemented, which revision provides for a reduction in the wheeling rate from $1.51 per kilowatt month to $1.44 per kilowatt month for delivery by Duke of approximately 194,500 kilowatts from SEPA's Hartwell, Clarks Hill, and Richard B. Russell Projects to preference customers of SEPA in Duke's service area in North Carolina and South Carolina.

Duke has requested a waiver of the Commission's notice requirements so that the revised rate becomes effective on January 21, 1988.

Copies of this filing were served on SEPA, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: January 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-65 Filed 1-4-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-94-000, et al.]

National Fuel Gas Supply Corp. et al.; Natural Gas Certificate Filings

December 29, 1987.

Take notice that the following filings have been made with the Commission:

1. National Fuel Gas Supply Corporation

[Docket No. CP88-94-000]

Take notice that on November 24, 1987, National Fuel Gas Supply Corporation (Applicant), 308 Seneca Street, Oil City, Pennsylvania 16301, filed in Docket No. CP88-94-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and firm transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authority to provide firm transportation service for up to 75,000 Mcf of natural gas per day for Transco Energy Marketing Company (TEMCO). Applicant states that the natural gas would be exported from Canada by TransCanada Pipelines, Ltd. and would

come into the United States at the Niagara River Border Crossing of Tennessee Gas Pipeline Company (Tennessee) in New York. Applicant would receive the natural gas at a new point of interconnection with Tennessee at Lewiston, New York and would transport the natural gas to an existing point of interconnection between Applicant's Y-M 52 line and the facilities of Transcontinental Gas Pipe Line Corporation (Transco) near Wharton, Pennsylvania, where it would deliver the gas for the account of TEMCO, it is stated.

It is stated that the gas to be transported is sold to TEMCO by Sulpetro Limited under assignment by Transco of a long term purchase contract. It is indicated that TEMCO would ultimately deliver the gas to three local distribution companies: Baltimore Gas and Electric Company, Long Island Lighting Company, and Public Service and Gas Company. In addition, Applicant states that Transco has also applied for a certificate of public convenience and necessity in Docket No. CP88-92-000 to authorize firm downstream transportation and associated facilities.

Applicant requests authorization to construct and operate the following facilities which would cost approximately $20,800,000:

1. Approximately 20 miles of 24-inch diameter pipeline extending from Tennessee's Niagara River crossing at Lewiston, New York to Applicant's existing Nash Road Station in Niagara County, New York.

2. Approximately 6,000 horsepower of incremental compression at Applicant's existing Ellisburg, Pennsylvania compressor station.

3. Approximately 1,000 horsepower of incremental compression at Applicant's existing East Fork Compressor station.

Applicant states that it would charge TEMCO an initial monthly demand rate of $2.3979 per Mcf of natural gas and an initial commodity rate of $0.0876 per Mcf of natural gas actually transported. Applicant also states that it believes this application is distinguished from open season proposals that may be filed in response to the Commission's Northeast open-season proceeding in Docket No. CP87-451-000.

Comment date: January 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP88-122-000]

Take notice that on December 9, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-122-000 a request pursuant to § 284.223 of the Commission Regulations under the Natural Gas Act, for authorization to provide a transportation service for Tenneco Oil Company (TOC), a producer, under Tennessee's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated October 22, 1987, it proposes to transport natural gas for TOC from various receipt points in Texas and Louisiana, both onshore and offshore, and to deliver equivalent volumes of gas to various delivery points in Texas and Louisiana.

Tennessee further states that the peak day quantity would be 103,400 dekatherm (dt) equivalent of natural gas, the average daily quantity would be 2,143 dt equivalent, and that the annual quantity would be 782,195 dt equivalent. Tennessee indicates that service under Section 284.223 (a) commenced November 4, 1987, as filed in Docket No. ST88-920 on November 25, 1987.

Comment date: February 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

3. Katy Interchange Service

[Docket No. CP88-123-000]

Take notice that on December 9, 1987, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, Coronado Transmission Company (Coronado), P.O. Box 165, Corpus Christi, Texas 78403, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, and Yankee Pipeline Company (Yankee or Operator), 2000 RepublicBank Center, 700 Louisiana Street, Houston, Texas 77002 (collectively referred to as Participants) [1] as Participants in the Katy Interchange Service (KIS) filed in Docket No. CP88-123-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) a gas interchange service to be rendered by the Interstate Pipeline Participants in the vicinity of Katy, Texas (Katy); [2] (2) a petition for declaratory order declaring that participation in KIS would not, in and of itself, subject the Participants to the open-access requirements of Order No. 436, *et seq.* and Order No. 500 *et seq.*; (3) a petition for declaratory order declaring that the gas interchange service to be rendered by the Intrastate Pipeline Participants would be pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA) and declaring that the transportation of gas to and from Katy by the Intrastate Pipeline Participants would be pursuant to section 311(a)(2); (4) a request that the Commission approve as "fair and equitable" the rate to be charged by the Interstate Pipeline Participants for the gas interchange service; and (5) a request by the Intrastate Pipeline Participants for waivers of certain Regulations of the Commission with respect to rate approval and reporting requirements, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the background for the subject application is as follows: The New York Mercantile Exchange (NYMEX) is planning to establish a market for natural gas futures contracts. In connection with establishing such a market, NYMEX has advised that a specific location must be designated where futures contracts can be closed, *i.e.*, where sellers of gas can deliver such gas for the account of buyers, for further transportation to the buyers. NYMEX has advised that the Katy area appears to be a desirable location for such closing because of the multiplicity of pipelines and related facilities in such area. The application states that all of the Participants own pipelines and related facilities in the area covered by KIS, and therefore are capable of receiving and/or delivering gas within the Katy area.

It is stated that the interchange service to be provided by the Participants in the Katy area would consist of (1) the delivery of gas from one pipeline to another (in certain cases the gas may have to move through several pipelines in the Katy area), and (2) the measurement of such gas (this service is referred to as the Service). The interconnection points of the participants which would be used in providing the Service is referred to as the Interchange. KIS would not cover transportation to or from the Interchange but only the service to be

[1] Currently, Transco and Trunkline are the Interstate Pipeline Participants and Coronado and Yankee are the Intrastate Pipeline Participants. Additional interstate, intrastate, and Hinshaw pipelines are expected to participate in KIS.

[2] A map of the Katy interchange area is attached. The map is not being printed in the Federal Register. Copies are available from the Commission's Public Reference Branch.

rendered by the Participants at the Interchange.

In an operating agreement executed by the Participants, Yankee is designated to serve as operator/dispatcher to coordinate the Service. The Operator, on behalf of itself and as agent for the other Participants, would execute a service agreement with the shippers for rendition of the Service.

The Participants state that the Service would be rendered on an interruptible basis, and would not interfere with Participants' use of their respective systems to provide sales and transportation services. It is stated that, as a practical matter, the variety of flow options within the area of the Interchange would make it exceedingly unlikely that a particular futures or spot transaction would be frustrated by blockage within the Interchange.

The Interstate Pipelines request that the Commission issue to them a common certificate of public convenience and necessity authorizing their part of rendition of the Service as described above. It is further requested that this certificate include any other interstate pipelines that subsequently elect to participate in the Service.

As previously stated, future interconnection points of the Participants in the Katy area would also be utilized in rendering the Service. Accordingly, the Interstate Pipelines request that the Commission authorize them to establish future interconnections in the Katy area for the *sole* purpose of utilizing such interconnections for Service. If an Interstate Pipeline Participant wants to utilize such a future interconnection for any other purpose, separate authority would have to be sought from the Commission.

It is stated that, if in the future any Hinshaw pipeline (as defined in section 1(c) of the Natural Gas Act) elects to participate in KIS, such Hinshaw pipeline would require certificate authorization to perform its share of the jurisdictional Service. In order to ensure that the authorizations granted by the Commission in response to the application are sufficiently comprehensive to deal with this possibility, Participants request in the application that the Commission order include certification for the Service rendered in the future by any Hinshaw pipeline.

The Participants state that the rendition of the Service would be nondiscriminatory. The Interstate Pipeline Participants request that they be permitted to perform this service on a self-implementing basis, without triggering the "open access" provisions of Order No. 436, *et seq.* and Order No. 500, *et seq.* (such as the contact reduction/conversion provisions) with respect to their systems at large. Otherwise, those Interstate Pipelines, if any, which have not elected open access would be unable to accept the certificate.

The Participants state NYMEX has advised that, in order for the natural gas futures market to function properly, KIS must be authorized to render its service in connection with both (1) gas delivered pursuant to the closing of futures contracts, and (2) gas delivered pursuant to transactions on the "spot" market. For purposes of the application, Participants state that spot market transactions are considered to be those of one month or less and include long-term contract arrangements which provide for prices and takes of gas to be determined on a month-by-month basis.

The application states that NYMEX has also advised that it is essential to the functioning of a natural gas futures market that a single uniform rate be changed by KIS for each MMBtu handled by the Service. (NYMEX has advised that 10,000 MMBtu's is the quantity that would be covered by each gas futures contract.) As explained by NYMEX, a single rate is needed so that the purchaser of a futures contract—at the time of the purchase—would know exactly the cost of the delivery of gas from seller to buyer at the Interchange. The Participants have concluded that, with the exception of Coronado, no Participant should assign any fixed system costs to the Service because such a small portion of each Participant's overall pipeline system is involved, and, thus, as a practical matter, it would be impossible to assign, on any meaningful basis, fixed costs to the Service. Coronado, by contrast, has invested considerable capital in pipeline and compression facilities which would be devoted to the Service, and the Participants have accordingly agreed that the uniform rate to be developed for the Service should reflect a component for Coronado which recognizes such investment. Other than the Coronado investment, the costs which would be incurred by all Participants include: (1) The fee charged by the operator for its services; (2) the filing fee paid to the Commission for filing the application and petition for declaratory order; (3) compressor fuel consumed by a Participant within the Interchange in order to deliver gas to another Participant within the Interchange; and (4) administrative expenses.

The Participants propose that a rate of 3.18 cents per MMBtu be charged for all gas handled at the Interchange during the period from the first handling of gas at the Interchange until twelve (12) months after the end of the first calendar month in which trading of natural gas futures contracts commences on the NYMEX. KIS would file with the Commission for a revised rate to be effective after such initial period, and such revised rate would be based on experienced gained by the Service during such period.

It is stated that, in order to participate in the Service and the transportation of gas to and from the Interchange, the Interstate Pipeline Participants must be assured that all of their activities with regard to same are authorized by section 311(a)(2) of the NGPA. Section 311(a)(2) of the NGPA and the Regulations promulgated thereunder authorize an intrastate pipeline to transport gas "on behalf of" an interstate pipeline or a local distribution company served by an interstate pipeline. One test of whether section 311(a)(2) transportation meets the "on behalf of" test is whether an interstate pipeline or local distribution company derives a substantial benefit from the transaction. *See Mississippi Fuel Company*, 32 FERC ¶ 61, 396 (1985). It is stated that the Interstate Pipeline Participants would derive substantial benefits from the exchange of gas at the Interchange and from the transportation of gas to and from the Interchange by the Intrastate Pipeline Participants because, without such services by the Intrastate Pipeline Participants, the versatility of the Interchange would be severely—perhaps fatally—impaired, and utilization of the Interstate Pipeline Participants would be less efficient. Therefore, the Intrastate Pipeline Participants request a declaratory order declaring that all of the activities in connection with (1) transportation service occurring within the Interchange, and (2) transportation of gas to and from the Interchange would be "on behalf of" the Interstate Pipelines and thus would be rendered pursuant to section 311(a)(2) of the NGPA.

For rendition, of the transportation services to and from the Interchange, the application states that the Intrastate Pipeline Participants would charge their existing rates for such services. However, since the rate to be charged for the Service (initially 3.18 cents per MMBtu) would be a new rate, the Intrastate Pipeline Participants need approval by the Commission that such rate is "fair and equitable" as required by section 311(a)(2)(B) of the NGPA.

It is stated that, since the rate to be charged by KIS would reflect a melding of the costs incurred by each of the Participants in rendering service though

the Interchange and that since the rate component for each of the Participants would be cost-based and, with the exception of Coronado, determined under a unform methodology, it follows that the requirements of § 311(a)(2) would be met for each Intrastate Pipeline Participant. Accordingly, pursuant to ¶ 284.123(b)(2) of the Regulations, the Intrastate Pipeline Participants request approval that the rate to be charged for the Service would constitute a "fair and equitable" rate insofar as the Intrastate Pipeline Participants are concerned.

It is stated that numerous transactions are expected to be rendered annually by KIS and that it would be unreasonably burdensome for the Intrastate Pipeline Participants to file § 284.123(b)(2) rate approval petitions and/or § 284.126 reports for every transaction at the Interchange in which an Intrastate Pipeline Participant engages. Moreover, if the Intrastate Pipeline Participants had to pay a $4,900 filing fee with each rate approval petition and/or a $600 filing fee with each report, the transactions would in all likelihood be unprofitable because many of these transactions are expected to involve small quantities of gas, and would earn revenues which do no more than recover out-of-pocket expenses.

Accordingly, the Intrastate Pipeline Participants request that the Commission waive the rate approval petition requirements of § 284.123(b)(2) and the reporting requirements of § 284.126 of the Regulations. The application states that such waiver is sought only in connection with service within the Interchange.

The Intrastate Pipeline Participants also request that the Commission waive the open access requirements of §§ 284.8 and 284.9 of the Regulations with respect to transactions at the Interchange because, otherwise, the Intrastate Pipeline Participants, if any, that have not elected generally to provide new section 311(a)(2) transportation service under Order No. 436 *et seq.* and Order No. 500, *et seq.* would be unable to participate in the Service. It is the intent of the Intrastate Pipeline Participants that all service within the Interchange would be rendered on a nondiscriminatory basis and that the above requests by the Intrastate Pipeline Participants are intended to extend to other intrastate pipelines that subsequently elect to participate in the Service.

With respect to reporting requirements, the Participants propose that the operator of the Interchange would file a combined annual report that contains certain information for the preceding year with respect to service rendered by KIS. The Participant propose that such annual report would be the only report required of the Participants with respect to the Interchange Service.

It is stated that the emergence of a futures market for a particular commodity is a clear sign that the value of such commodity can be fairly and effectively determined by market forces. As explained by NYMEX, the competitive environment, which gives rise to a futures trade in the first place, is itself well-served by such futures trade. Accordingly, the participants state that for actual sellers and buyers of gas, a futures trade should mean greater price predictability. Furthermore, for the industry in general, a gas futures trade should serve a useful price finding function by helping establish the nationwide production area value of gas at any point in time. The Participants consider the purposes and effects of a gas futures trade to be entirely consistent with the procompetitive objectives underlying Commission Order No. 436, *et seq.* and Order No. 500, *et seq.* It is stated that in order for a natural gas market to be viable, deliver must be achievable with a minimum amount of regulatory oversight. The authorizations and clarifications requested in this application, although modest in scope, are essential to the timely performance of natural gas futures contracts to be traded on the NYMEX. For these reasons, the Participants submit that the public convenience and necessity require authorization of the services described herein and granting of the declaratory orders and waivers requested herein.

It is stated that no new facilities are proposed in connection with the subject application and that the Participants would utilize existing capacity to handle the quantities of gas covered by such application. It is estimated that 67,200,000 MMBtus would be handled by KIS during the first year of operation.

Comment date: January 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

4. East Tennessee Natural Gas Company

[Docket No. CP88-134-000]

Take notice that on December 17, 1987, East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee 37939-0245, filed an application in Docket No. CP88-134-000 pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the rearrangement of the maximum daily quantities by delivery point and to increase the contract demand authorization by 1,500 Mcf of its customer, Middle Tennessee Utility District of Cannon, Chamberland, Dekalb, Hamilton, Putnam, Rhea, Rutherford, Smith, Warren, White, and Wilson Counties, Tennessee (MTUD), all as more fully set forth in the application on file with the Commission and open to public inspection.

East Tennessee indicates that to implement the requested increase in contract demand and rearrangement of maximum daily quantities it would be necessary to construct and operate 6.27 miles of six-inch loop on its Carthage Lateral. East Tennessee estimates a cost of $1,420,800, which would be financed from funds on hand.

Applicant states that it proposes to utilize system supplies to meet the increase in contract demand of 1,500 Mcf.

Comment date: January 19, 1988, in accordance with Standard Paragraph F at the end of this notice.

5. Lone Star Gas Company, a Division of ENSERCH Corporation)

Docket No. CP88-130-000

Take notice that on December 16, 1987, Lone Star Gas Company a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201 filed in Docket No. CP88-130-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain sales taps, lateral lines and appurtenant facilities, under the authorization issued in Docket Nos. CP83-59-000, CP83-59-001 and CP83-59-002 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Lone Star proposes to abandon its facilities heretofore used to provide gas service to the following customers:

Customer and Location	Line
W. C. Davis, Wichita County, TX	A16 (portion).
S&J Operating Co., Wichita County, TX	A18-6 (all).
Two-State Cattle Feeders, Wilbarger County, TX.	A28 (all)

Lone Star states that it has received letters from Davis and S&J Operating Company consenting to termination of service. It is further stated that Lone Star has not obtained a letter of consent from Two-State Cattle Feeders (Two-State). However, Two-State's alfalfa mill is no longer in operation and no gas has been delivered to Two-State since 1980,

it is asserted. It is stated that no other customers are served from these facilities. Lone Star proposes to remove these sales taps, lateral lines and appurtenant facilities, which are located in Wichita and Wilbarger Counties, Texas. Lone Star states that sales to these customers have heretofore been made at the appropriate rate as provided by state authorities.

Comment date: February 12, 1988, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-66 Filed 1-4-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRI-3310-9]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions:

SUMMARY: The purpose of this notice is to announce that between July 1, 1987 and October 31, 1987, the United States Environmental Protection Agency (EPA) Region II Office, issued three final determinations and the New York State Department of Environmental Conservation (NYSDEC) issued one final determination pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**))

FOR FURTHER INFORMATION CONTACT: Mr. Karl Mangels, Acting Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 432, New York, New York 10278, (212) 264-4333.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA Region II Office has made three final determinations and the NYSDEC has made one final determination relative to the sources listed below:

Name of applicant	Location	Project description	Reviewing agency	Final action	Date of final action
Hydraco Enterprises (Salt City Energy Venture).	(Old Allied Power House) Solway, New York.	Rehabilitation of six boilers and replacement of two turbine/generators capable of producing 79.9 MW of electricity.	NYSDEC	PSD-non-applicability determination.	Aug. 8, 1987.
Squibb Manufacturing, Inc.	Humacao, Puerto Rico.	Converting the use of an 800 Hp boiler from standby mode to full time mode.	EPA Region II	PSD non-applicability determination.	Sept. 3, 1987.
Virgin Islands Water and Power Authority.	St. Croix, U.S. Virgin Islands.	Construction of a 23 MW stationary gas turbine.	EPA Region II	Amended PSD applicability determination for NO_x only.	Sept. 14, 1987.
Virgin Islands Water and Power Authority.	St. Thomas, U.S. Virgin Islands.	Cconstruction of a 23 MW stationary gas turbine.	EPA Region II	Amended PSD applicability determination for NO_x only.	Sept. 14, 1987.

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices.

EPA Region II Actions

United States Environmental Protection Agency, Permits

Administration Branch, 26 Federal Plaza, New York, New York 10278.

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany New York 12233-0001.

If available pursuant to the Consolidated Permit Regulations (40 CFR Part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations were published in the **Federal Register**. Under Section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: December 17, 1987.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 88-52 Filed 1-4-88; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-3311-4]

Water Quality Criteria; Availability of Document

AGENCY: Environmental Protection Agency.

ACTION: Notice of final ambient water quality criteria document.

SUMMARY: EPA announces the availability and provides a summary of the final ambient water quality criteria document for selenium. These criteria are published pursuant to section 304(a) (1) of the Clean Water Act. These water quality criteria may form the basis for enforceable standards.

Availability of Document

This notice contains: (1) A summary of the selenium document containing final ambient water quality criteria for the protection of aquatic organisms and their uses, (2) responses to public comments. Copies of the complete criteria document may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (phone number (703) 487-4650). The NTIS publication order number for the document is published below. This document is also available for public inspection and copying during normal business hours at: Public Information Reference Unit, U.S. Environmental Protection Agency, Room 2404 (rear), 401 M St., SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. Copies of this document are also available for review in the EPA Regional Office libraries. Copies of the document are *not* available from the EPA office listed below. Requests sent to that office will be forwarded to NTIS or returned to the sender.

1. Ambient Water Quality Criteria for Selenium—EPA-440/5-87-006; NTIS Number PB 88-142 237.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Gostomski, Criteria and Standards Division (WH-585), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 475-7321.

SUPPLEMENTARY INFORMATION:

Background

Section 304(a) (1) of the Clean Water Act (33 U.S.C. 1314(a) (1)) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life, and recreation.

EPA has periodically issued ambient water quality criteria, beginning in 1973 with publication of the "Blue Book" (Water Quality Criteria 1972). In 1976, the "Red Book" (Quality Criteria for Water) was published. On November 28, 1980 (45 FR 79318), EPA announced the publication of 64 individual ambient water quality criteria documents for pollutants listed as toxic under section 307(a) (1) of the Clean Water Act. A document addressing 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) was announced on February 15, 1984 (49 FR 5831), completing the coverage of the 65 priority pollutants listed under section 307(a) (1).

EPA issued nine individual water quality criteria documents on July 29, 1985 (50 FR 30784) which updated or revised criteria previously published in the "Red Book" or in the 1980 water quality criteria documents. A revised version of the National Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses was announced at the same time. A bacteriological ambient water quality criteria document was published on March 7, 1986 (51 FR 8012). A water quality criteria document for dissolved oxygen was published on June 24, 1986 (51 FR 22978). All of the publications cited above were summarized in "Quality Criteria for Water, 1986" which was released by the Office of Water Regulations and Standards on May 1, 1986. Updates to the Quality Criteria for Water, 1986 are published annually. Final water quality criteria documents for chlorpyrifos, nickel, pentachlorophenol, parathion, and toxaphene were issued by EPA on December 3, 1986 (51 FR 43665). On March 2, 1987, (52 FR 6213), EPA issued a final water quality criteria document for zinc.

Today EPA is announcing the availability of a final water quality criteria document for selenium which updates and revises criteria previously published in the 1980 ambient water quality criteria document. A draft criteria document for selenium was made available for public comment on May 1, 1986 (51 FR 16205). These final criteria have been derived after consideration of all comments received.

Dated: December 22, 1987.

Lawrence J. Jensen,

Assistant Administrator for Water.

Appendix A—Summary of Water Quality Criteria for Selenium

The procedures described in the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" indicate that, except possibly where a locally important species is very sensitive, freshwater aquatic organisms and their uses should not be affected unacceptably if the four-day average concentration of selenium does not exceed 5 ug/L more than once every three years on the average and if the one-hour average concentration does not exceed 20 ug/L more than once every three years on the average.

The procedures described in the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" indicate that, except possibly where a locally important species is very sensitive, saltwater aquatic organisms and their uses should not be affected unacceptably if the four-day average concentration of selenium does not exceed 71 ug/L more than once every three years on the average and if the one-hour average concentration does not exceed 300 ug/L more than once every three years on the average. If selenium is an toxic to saltwater fishes in the field as it to freshwater fishes in the field, the status of the fish community should be monitored whenever the concentration of selenium exceeds 5 ug/L in salt water.

Implementation

Because of the variety of forms of selenium in ambient water and the lack

of definitive information about their relative toxicities to aquatic species, no available analytical measurement is known to be ideal for expressing aquatic life criteria for selenium. Previous aquatic life criteria for metals and metalloids were expressed in terms of the total recoverable measurement, but newer criteria for metals and metalloids were expressed in terms of the acid-soluble measurement. Acid-soluble selenium (operationally defined as the selenium that passes through a 0.45 um membrane filter after the sample has been acidified to a pH between 1.5 and 2.0 with nitric acid) is probably the best measurement at the present for the following reasons:

1. This measurement is compatible with nearly all available data concerning toxicity of selenium to, and bioaccumulation of selenium by, aquatic organisms. It is expected that the results of tests used in the derivation of the criteria would not have changed substantially if they had been reported in terms of acid-soluble selenium.

2. On samples of ambient water, measurement of acid-soluble selenium will probably measure all forms of selenium that are toxic to aquatic life or can be readily converted to toxic forms under natural conditions. In addition, this measurment probably will not measure several forms, such as selenium that is occluded in minerals, clays, and sand or is strongly sorbed to particulate matter, that are not toxic and are not likely to become toxic under natural conditions.

3. Although water quality criteria apply to ambient water, the measurement used to express criteria is likely to be used to measure selenium in aqueous effluents. Measuement of acid-soluble selenium is expected to be applicable to effluents. If desired, dilution of effluent with receiving water before measurement of acid-soluble selenium might be used to determine whether the receiving water can decrease the concentration of acid-soluble selenium because of sorption.

4. The acid-soluble measurement is expected to be useful for most metals and metalloids, thus minimizing the number of samples and procedures that are necessary.

5. The acid-soluble measurement does not require filtration of the sample at the time of collection, as does the dissolved measurement.

6. For the measurement of total acid-soluble selenium the only treatment required at the time of collection is preservation by acidification to a pH between 1.5 and 2.0, similar to that required for the total recoverable measurement.

7. Durations of 10 minutes to 24 hours between acidification and filtration of most samples of ambient water probably will not substantially affect the rest of the measurement of total acid-soluble selenium. However, acidification might not prevent oxidation or reduction of selenium (-II), selenium (VI), or selenium (IV). Therefore measurement of acid-soluble selenium (IV) and/or acid-soluble selenium (VI) might require separation or measurement at the time of collection of the sample or special preservation to prevent conversion of one oxidation state of selenium to the other.

8. Ambient waters have much higher buffer intensities at a pH between 1.5 and 2.0 than they do at a pH between 4 and 9.

9. Differences in pH within the range of 1.5 to 2.0 probably will not affect the result substantially.

10. The acid-soluble measurement does not require a digestion step, as does the total recoverable measurement.

11. After acidification and filtration of the sample to isolate the acid-soluble selenium, the analysis for total acid-soluble selenium can be performed using either furnace or hydride atomic absorption spectrophotometric or ICP-atomic emission spectrometric analysis, as with the total recoverable measurement. It might be possible to separately measure acid-soluble selenium (IV) and acid-soluble selenium (VI).

Thus, expressing aquatic life criteria for selenium in terms of the acid-soluble measurement has both toxicological and practical advantages. The U.S. EPA is considering development and approval of a method for a measurement such as acid-soluble.

Metals and metalloids might be measured using the total recoverable method. This would have two major impacts because this method includes a digestion procedure. First, certain species of some metals and metalloids cannot distinguish between individual oxidation states. Second, in some cases these criteria would be overly protective when based on the total recoverable method because the digestion procedure will dissolve selenium that is not toxic and cannot be converted to a toxic form under natural conditions. Because no measurement is known to be ideal for expressing aquatic life criteria for selenium or for measuring selenium in ambient water or aqueous effluents, measurement of both acid-soluble selenium and total recoverable selenium in ambient water or effluent or both might be useful. For example, there might be cause for concern when total recoverable selenium is much above an applicable limit, even though acid-soluble selenium is below the limit.

In addition, metals and metalloids might be measured using the dissolved method, but this would also have several impacts. First, whatever analytical method is specified for measuring selenium in ambient surface water will probably also be used to monitor effluents. It effluents are monitored by measuring only the dissolved metals and metalloids, the effluents might contain some selenium that would not be measured but might dissolve, due to dilution or change in pH or both, when the effluent is mixed with receiving water. Second, measurement of dissolved selenium requires filtration of the sample at the time of collection. Third, the dissolved measurement is especially inappropriate for use with such metals as aluminum that can exist as hydroxide and carbonate precipitates in toxicity tests and in effluents. Use of different methods for different metals and metalloids would be unnecessarily complicated. For these reasons, it is recommended that aquatic life criteria for selenium not be expressed as dissolved selenium.

As discussed in the Water Quality Standards Regulation and the Foreword to this document, a water quality criterion for aquatic life has regulatory impact only after it has been adopted in a State water quality standard. Such a standard specifies a criterion for a pollutant that is consistent with a particular designated use. With the concurrence of the U.S. EPA, States designate one or more uses for each body of water or segment thereof and adopt criteria that are consistent with the use(s). In each standard a State may adopt the national criterion, if one exists, or, if adequately justified, a site-specific criterion.

Site-specific criteria may include not only site-specific criterion concentrations, but also site-specific, and possible pollutant-specific, durations of averaging periods and frequencies of allowed excursions. The averaging periods of "one hour" and "four days" were selected by the U.S. EPA on the basis of data concerning how rapidly some aquatic species react to increases in the concentrations of some pollutants, and "three years" is the Agency's best scientific judgment of the average amount of time. However, various species and ecosystems react and recover at greatly differing rates. Therefore, if adequate justification is provided, site-specific and/or pollutant-specific concentrations, durations, and frequencies may be higher or lower than

those given in national water quality criteria for aquatic life.

Use of criteria, which have been adopted in State water quality standards, for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Although dynamic models are preferred for the application of these criteria limited data or other considerations might require the use of a steady-state model. Guidance on mixing zones and the design of monitoring programs is also available.

[FR Doc. 88-53 Filed 1-4-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreements 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.: 202-010636-030.

Title: U.S. Atlantic-North Europe Conference.

Parties:

Atlantic Container Line, B.V. Dart-ML Limited Hapag-Lloyd AG Sea-Land Service, Inc. Gulf Container (GCL), B.V. P&O Containers (TFL) Limited Compagnie Generale Maritime Nedlloyd Lijnen, B.V.

Synopsis: The proposed modification clarifies Article 5, Conference Authority, by specifically stating that the cargo moved by member lines includes cargo not subject to tariff filing under section 8(a)(1) of the Shipping Act of 1984.

Agreement No.: 232-011163.

Title: Hong Kong Islands Line America S.S./Gearbulk Container Service Space Charter and Sailing Agreement.

Parties:

Hong Kong Islands Line America S.A. ("HKIL")

Gearbulk Ltd. DBA Gearbulk Container Services ("GBCS")

Synopsis: The proposed space charter and sailing arrangement would permit GBCS to charter space on its vessels to HKIL in connection with service between the Far East and the U.S. West Coast.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: December 30, 1987.

[FR Doc. 88-68 Filed 1-4-88; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 87-29]

Hemisphere Navigation Co., Inc. v. Sea-Land Service, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Hemisphere Navigation Co., Inc. ("Hemisphere") against Sea-Land Service, Inc. ("Sea-Land") was served December 29, 1987. Hemisphere alleges that Sea-Land has violated various sections of the Intercoastal Shipping Act of 1933, 46 U.S.C. app. 843, the Shipping Act, 1916, 46 U.S.C. app. 801, and the Shipping Act of 1984, 46 U.S.C. app. 1701, by wrongfully charging and demanding, collecting and receiving ocean freight and terminal charges in excess of what was properly applicable pursuant to Sea-Land's Tariff FMC-F-No. 61, in effect between San Juan, Puerto Rico and U.S. Atlantic and Gulf ports.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by December 29, 1988, and the final decision of the Commission shall be issued by May 1, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 88-67 Filed 1-4-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Northern of Tennessee Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 21, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Northern of Tennessee Corp.*, Clarksville, Tennessee; to merge with Stewart County Bancorp, Inc., Dover, Tennessee, and thereby indirectly acquire Peoples Bank, Dover, Tennessee.

2. *SunTrust Banks, Inc.*, Atlanta, Georgia, and Sun Banks, Inc., Orlando, Florida; to acquire 100 percent of the voting shares of Commerical Bank in Panama City, Panama City, Florida.

3. *TSB Bancorp, Inc.*, Woodland, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Talbot State Bank, Woodland, Georgia.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. *First Farmers Financial Corporation,* Converse, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of First Farmers National Bank, Converse, Indiana. Comments on this application must be received by January 15, 1988.

2. *Market Place Bancshares, Inc.,* Champaign, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Market Place National Bank, Champaign, Illinois.

3. *South Holland Bancorp, Inc.,* South Holland, Illinois; to acquire 100 percent of the voting shares of First Dolton Corp., Dolton, Illinois, and thereby indirectly acquire First National Bank in Dolton, Dolton, Illinois.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *T & C Bancorp, Inc.,* Lewistown, Missouri; to merge with LaBelle Bancshares, Inc., Lewistown, Missouri, and thereby indirectly acquire The Bank of LaBelle, LaBelle, Missouri; North Missouri Bancorp, Inc., Edina, Missouri, and thereby indirectly acquire The Citizens Bank of Edina, Edina, Missouri; and Great River Bancshares, Inc., Lewistown, Missouri, and thereby indirectly acquire Farmers & Merchants Bank, La Grange, Missouri.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *El Camino Bancorp,* Anaheim, California; to merge with Citizens Holdings, Newport Beach, California, and thereby indirectly acquire Citizens Bank of Costa Mesa, Costa Mesa, California.

Board of Governors of the Federal Reserve System, December 29, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-20 Filed 1-4-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Trade Regulation; Funeral Industry Practices; Information Collection Requirement

AGENCY: Federal Trade Commission.

ACTION: Application to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501-3518, for clearance of the information collection requirements contained in the Funeral Industry Practices Rule.

SUMMARY: The Federal Trade Commission is requesting a three year extension of existing OMB approval of information collection requirements (as defined in 5 CFR Part 1320) contained in its Trade Regulation Rule Concerning Funeral Industry Practices, 16 CFR Part 453.

On July 22, 1981, the Commission submitted the information collection requirements contained in the Funeral Rule to OMB for review. OMB approved that request and assigned control number 3084-0025 to those requirements. On reapplication, OMB approval was extended for a three-year period until December 31, 1987. The FTC now requests another extension of OMB's approval of the disclosure, reporting, and recordkeeping requirements contained in the Rule.

The Supporting Statement previously submitted to OMB for the Funeral Rule estimated its paperwork burden to be not more than 177,000 hours per year. All but 1,000 hours of that effort is made by funeral providers ensuring compliance with the rule's disclosure and recordkeeping requirements. The remainder accounts for the effort of states that elect to seek exemptions from the rule's coverage as provided in 16 CFR 453.9.

On December 9, 1987, the FTC gave advance notice of proposed rulemaking to address whether the Funeral Rule should remain in effect without changes, or should be amended or repealed. That notice also requested public input on the burden issue. Pending the development of more or better data, the existing burden estimates should remain in force.

DATES: Comments on this application may be submitted on or before February 4, 1988.

ADDRESS: Send comments on this request for OMB Review to Don Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503. Copies of this application may be obtained from: Public Reference Branch, 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.

Robert D. Paul,

General Counsel.

[FR Doc. 88-2 Filed 1-4-88; 8:45 am]

BILLING CODE 6750-01-M

Granting of Request for Early Termination of Waiting Period Under Premerger Notification Rules; Mobile Metro CTS et al.

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney general advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 12/14/87 AND 12/24/87

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
(1) Metro Mobile CTS, Centel Corporation, Centel Corporation	88-0357	12/14/87
(2) Glenn R. Jones, Maryland Cable Limited Partnership, Maryland Cable Limited Partnership	88-0448	12/14/87
(3) Amoco Corporation, Crown Central Petroleum Corporation, Crown Central Petroleum Corporation	88-0451	12/14/87
(4) Fireman's Fund Corporation, Crown Central Petroleum Corporation, Crown Central Petroleum Corporation	88-0454	12/14/87
(5) West Timbers Limited Partnership, Crown Central Petroleum Corporation, Crown Central Petroleum Corporation	88-0455	12/14/87
(6) Ciba-Geigy Limited, Leader National Corporation, B.S.B. Diversified Co., Inc.	88-0446	12/15/87
(7) Dr. Arend Oetker, General Mills, Inc., Pioneer Products, Inc.	88-0490	12/15/87
(8) Roxboro Investments (1976) Ltd., Textron Inc., Textron Inc.	88-0435	12/16/87
(9) WGHP Limited Partnership, Voting Trust of the Providence Journal Company, WPHL-TV, Inc.	88-0233	12/17/87
(10) Procordia AB, FSLIC as receiver for Vernon Savings & Loan Assoc., FSA, Dondi Group, Inc.	88-0335	12/17/87
(11) Chicago Pacific Corporation, Brown Jordan Company Limited Partnership, Brown Jordan Company Limited Partnership	88-0354	12/17/87
(12) Keystone Coca-Cola Bottling and Distribution Corp., Coca-Cola Bottling Company of Rochester, Inc., Coca-Cola Bottling Company of Rochester, Inc.	88-0374	12/17/87
(13) Coca-Cola Bottling Company of Rochester, Inc., Keystone Coca-Cola Bottling and Distribution Corp., Keystone Coca-Cola Bottling and Distribution Corp	88-0375	12/17/87

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 12/14/87 AND 12/24/87—Continued

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
(14) Sony Corporation, CBS, Inc., CBS Records and CBS/Sony Group Inc.	88-0378	12/17/87
(15) Warburg, Pincus Capital Company, L. P., United HealthCare Corporation, United HealthCare Corporation	88-0400	12/17/87
(16) Hotel Investors Trust, Las Vegas Investors, Ltd., Las Vegas Investors, Ltd.	88-0424	12/17/87
(17) VEBA AG, Feldmuhle Nobel AG, Dynamit Nobel AG	88-0440	12/17/87
(18) First Financial Management Corporation, First Data Management Holding Company, First Data Management Holding Company	88-0460	12/17/87
(19) High Equity Partners, L.P. Series 86, Crow Charlotte Retail #2, Ltd., Crow Charlotte Retail #2, Ltd.	88-0483	12/17/87
(20) Aoki Corporation, Allegis Corporation, Westin Hotel Corporation	88-0487	12/17/87
(21) Peko-Wallsend Ltd., Richard Levin, Richard Levin	88-0495	12/17/87
(22) The British Petroleum Company p.l.c., Lundy Holding Company, Lundy Holding Company	88-0498	12/17/87
(23) Western Savings and Loan Association, Finalco Group, Inc., Finalco Incorporated and Finalco Telemanagement, Inc.	88-0538	12/17/87
(24) ITT Corporation, Triad Hotel Associates, Ltd., Triad Hotel Associates, Ltd.	88-0562	12/17/87
(25) Springs Industries, Inc., United Merchants and Manufacturers, Inc., United Merchants and Manufacturers, Inc.	88-0404	12/18/87
(26) Kotobuki Fudosan Ltd., The Prudential Insurance Company of America, BMI Acquisition Corporation	88-0418	12/18/87
(27) Unisys Corporation, Timplex, Inc., Timplex, Inc.	88-0426	12/18/87
(28) Unisys Corporation, Timplex, Inc., Timplex, Inc.	88-0427	12/18/87
(29) Amoco Corporation, Premark International, Inc., Dartco Manufacturing Inc.	88-0430	12/18/87
(30) Edward Botwinick, Unisys Corporation, Unisys Corporation	88-0436	12/18/87
(31) Northwestern National Life Insurance Company, Provident Life and Accident Insurance Company, Provident General Insurance Company	88-0444	12/18/87
(32) Robert M. Bass, Prime Cable of Georgia, Ltd., Prime Cable of Georgia, Ltd.	88-0479	12/18/87
(33) Robert M. Bass, Prime Cable of Georgia, Ltd., Cable Atlanta Limited	88-0486	12/18/87
(34) Federal Signal Corporation, Manchester Tool Company, Manchester Tool Copany	88-0512	12/18/87
(35) Ben Weider, Highland Associates, Weslo, Inc.	88-0536	12/18/87
(36) RLAC Corporation, ITT Corporation, The Sheraton Corporation	88-0555	12/18/87
(37) Hargro Enterprises, Inc., Frye Acquisition Partners, Computer Supplies, Inc., Frye Computer Supplies, Inc.	88-0482	12/21/87
(38) Rock-Tenn Company, The Mead Corporation, The Mead Corporation	88-0511	12/21/87
(39) RPM, Inc., Craft House Corporation, Craft House Corporation	88-0533	12/21/87
(40) Basf Aktiengesellschaft, Amax Inc., Amax Petroleum Company	88-0554	12/21/87
(41) Societe Nationale Elf Aquitaine, Amax Inc., Amax Petroleum Company	88-0561	12/21/87
(42) Burns, Philp & Company Limited, RJR Nabisco, Inc., Dromedary business operations of Nabisco	88-0450	12/22/87
(43) Continental Information Systems Corporation, Amoco Corporation, Amoco Tax Leasing I Corporation	88-0467	12/22/87

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 12/14/87 AND 12/24/87—Continued

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
(44) Wetterau Incorporated, William M. Moran, Jr., The Moran Group Inc.	88-0476	12/22/87
(45) Sears, Roebuck & Co., Illinois Tool Works Inc., ITW Truswal Corporation	88-0496	12/22/87
(46) Daishowa Paper Mfg. Co., Ltd., James River Corporation of Virginia, James River's directory paper mill and related	88-0508	12/22/87
(47) Seibu Railway Company, Ltd., Aoki Corporation, Mauna Kea Properties, Inc.	88-0518	12/22/87
(48) Richard M. Connor, Jr., Primenca Corporation, Timberlands and related assets	88-0524	12/22/87
(49) Huhtamaki, Oy, RJR Nabisco, Inc., Nabisco Brands, Inc./Nabisco, Inc.	88-0530	12/22/87
(50) Bunzl plc, Joseph Behr & Sons Inc., The Paper Group, Inc.	88-0543	12/22/87
(51) Mobile Communications Corp. of America, Harry L. Brock, Jr., Bakersfield Cellular Telephone Company	88-0437	12/23/87
(52) Henry L. Hillman, Genus, Inc., Genus, Inc.	88-0445	12/23/87
(53) Barnes Hospital, Healthtrust, Inc.—The Hospital Company, St. Peters Community Hospital	88-0468	12/23/87
(54) BellSouth Corporation, Harry L. Brock, Jr., Bakersfield Cellular Telephone Company	88-0475	12/23/87
(55) Alex Hackel, AMAX, Inc., Alumax of South Carolina, Inc.	88-0492	12/23/87
(56) Norman M. Lear, Henry Posner, Jr., Meridian Communications Corp./West VA Telecasting Inc.	88-0531	12/23/87
(57) System Industries, Inc., First Mississippi Corporation, Imperial Technology, Inc.	88-0580	12/23/87
(58) Joslyn Corporation, Roy Coats Family Trust, Sunbank Family of Companies, Inc.	88-0348	12/24/87
(59) Southmark Corporation, Mercury Savings Association of Texas, Mercury Savings Association of Texas	88-0478	12/24/87
(60) Eastman Kodak Company, Ektra Photofinishing Corporation, Ektra Photofinishing Corporation	88-0513	12/24/87
(61) Fuqua Industries, Inc., Ektra Photofinishing Corporation, Ektra Photofinishing Corporation	88-0514	12/24/87
(62) Donald G. Jones, First Carolina Cable TV, L.P., Big River Cablevision, Inc. and Denmark Cablevision,	88-0515	12/24/87
(63) FPL Group, Inc. Citrus World, Inc., Citrus World, Inc.	88-0532	12/24/87
(64) MAI Basic Four, Inc., Bell Atlantic Corporation, Sorbus Inc.	88-0563	12/24/87
(65) Citicorp, Santa Fe Southern Pacific Corporation, Bankers Leasing and Financial Corporation	88-0582	12/24/87

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commisson, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 88-23 Filed 1-4-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87N-0419]

Drug Export; Isoprenaline (Isoproterenol) Hydrochloride Injection

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that International Medication Systems Limited (IMS) has filed an application requesting approval for the export of the human drug Isoprenaline (Isoproterenol) Hydrochloride Injection to Australia, Ireland, Switzerland, the United Kingdom, and the Federal Republic of West Germany.

ADDRESS: Relevant information on this application may be directed to the Docket 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: Rudolf Apodaca, Center for Drug Evaluation and Research (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

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 International Medication System Limited (IMS), 1886 Santa Anita Avenue, South El Monte, California 91733, has

filed an application requesting approval for the export of the drug Isoprenaline (Isoproterenol) Hydrochloride Injection to Australia, Ireland, Switzerland, the United Kingdom, and the Federal Republic of West Germany. This drug is indicated in the treatment of cardiac standstill or arrest; carotid sinus hypersensitivity; the temporary control of Adams-Stokes syndrome; and ventricular tachycardia and ventricular arrhythmias when due to A-V heart block.

The application was received and filed in the Center for Drug Evaluation and Research on December 15, 1987, 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 January 15, 1988, 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 21 CFR 5.44.

Dated: December 22, 1987.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research/Center for Biologics Evaluation and Research.

[FR Doc. 88-61 Filed 1-4-88; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; New System of Records

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Evaluation of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) Health Maintenance Organization (HMO) and Competitive Medical Plan (CMP) Program," HHS/HCFA/ORD No. 09-70-0038. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the portion of the system which describes the routine uses of the system be published for comment, HCFA invites comment on all portions of this notice.

DATES: HCFA filed a new system report with the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, and the Executive Office of Management and Budget (EOMB) on December 30, 1987. The new system of records, including routine uses, will become effective February 29, 1988, unless HCFA receives comments which would convince us to make a contrary determination. Please note that comments must be received on or before February 4, 1988.

ADDRESS: The public should address comments to Richard A. DeMeo, Privacy Act Officer, Office of Management and Budget, Health Care Financing Administration, Room G-M-1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: James Hadley, Division of Health Systems and Special Studies, Office of Research and Demonstrations, Room 2306 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone (301)-594-1968.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records collecting data under the authority of section 1875 of the Social Security Act. The purpose of this system of records is to provide data necessary to evaluate the TEFRA HMO and CMP program. The introduction of this major new program has raised numerous issues relating to the payment methodology, the use and cost of services, the quality of care, and the effects upon competition in the marketplace. The TEFRA program evaluation will extend for 48 months and will include a sample of 50 to 60 plans from a variety of market areas representing the current distribution of TEFRA plans and market area characteristics. This design will allow analyses to determine whether TEFRA HMOs and CMPs are responding appropriately in providing adequate and efficient health care to the Medicare population, as well as to define the modifications necessary for the program to effectively meet its goals.

The system of records will include data collected from the Health Insurance Master Files, data from the participating HMOs Medicare Statistical Systems, and a beneficiary survey. The sites that are scheduled to participate in the demonstration are to be determined.

In order to fulfill the objective and complete tasks in this project, the contractor must have individually-identified records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, we do not anticipate that it will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for administering the Medicare program for which we are responsible. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: December 24, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

09-70-0038

SYSTEM NAME:

Evaluation of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) Health Maintenance Organization (HMO) and Competitive Medical Plan (CMP) Program

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Contact system manager for location of contractor.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicare beneficiaries residing in approximately 30 market areas who receive medical services as enrollees in Medicare HMOs and CMPs or through the FFS sector.

CATEGORIES OF RECORDS IN THE SYSTEM:

Demographic characteristics (e.g., age, education, income), measures of health and functional status, cost and utilization of health services, and satisfaction with services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 402 of the Social Security Amendments of 1967, Public Law 90–248, as amended by section 222(b) of the Social Security Amendments of 1972, Public Law 92–603, (42 U.S.C. 139511).

PURPOSE OF THE SYSTEM:

To provide data necessary to evaluate the impact of the TEFRA HMO and CMP Program on the cost, utilization, and quality of medical services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USERS:

Disclosure may be made:

1. To the evaluation contractor, to be selected by HCFA, who will use this information to evaluate the TEFRA HMO and CMP Program. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

2. To other contractors for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in this system or for developing, modifying, and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

3. To a congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

a. HHS, or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

5. To an individual or organization for research, demonstration, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or the efficacy or efficiency of HCFA programs if HCFA:

a. Determines that the proposed use does not violate legal limitations under which the record was provided, collected, or obtained, including such limitations as may be imposed or provided under the Privacy Act;

b. Determines that the purpose for which the proposed use is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in a form that identifies individuals;

(2) Is of sufficient importance to warrant the effect on or risk to the privacy of the individual by such limited additional exposure that unauthorized disclosure of the record might bring; and

(3) There is a reasonable probability that the objective of the use will be accomplished;

c. Requires the recipient of the information to:

(1) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from HCFA that is justified based on research objectives for retaining such information; and

(3) Make no further use of the record except:

(a) For use in emergency circumstances affecting the health or safety of any individual following written authorization of HCFA;

(b) For disclosure to a person, identified in advance by HCFA, for the purpose of conducting an audit of the research project, provided information which would identify research subjects is destroyed by the person authorized to conduct the audit at the earliest opportunity, consistent with the purpose of the audit; or

(c) When further approved by HCFA.

d. Secures a written, legally binding statement by the recipient of the information attesting that the recipient understands the provisions of paragraph 4(c) and all terms and conditions of the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Paper and magnetic tape.

RETRIEVABILITY:

Information will be retrieved by beneficiary's name and health insurance claim number.

SAFEGUARDS:

Employees who maintain records in this system are instructed to grant access only to authorized users. Data stored in computers are accessed through the use of passwords/keywords/numbers known only to the authorized personnel. These passwords/keywords are changed as needed.

Contractors who maintain records in this system are instructed to make no further disclosures of the records except as authorized by the system manager in accordance with the Privacy Act. Privacy Act requirements are specifically included in contracts related to this system. The project officer and contract officer oversee compliance with these requirements. The particular safeguards implemented are developed in accordance with the DHHS *ADP Systems Manual*, Part 6, ADP Systems Security (e.g., use of passwords), and the National Bureau of Standards Federal Information Processing Standards.

RETENTION AND DISPOSAL:

Hardcopy data collection forms and magnetic tapes with identifiers wil be retained in secure storage areas. The disposal technique of degaussing will be used to strip magnetic tape of all identifying names and numbers in December 1992. Hardcopy records will be destroyed at this time.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address indicated above, specify name, address, and health insurance number.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should reasonably specify the record contents being sought. (These procedures are in accordance with HHS Regulations (45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

Contact the System Manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting it (e.g., why it is inaccurate, irrelvant, incomplete, or not current). (These procedures are in accordance with HHS Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained from surveys to be conducted of Medicare beneficiaries by HCFA's evaluation contractor.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 88-10 Filed 1-4-88; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Public Health Service; Proposed Funding Priority and Program Announcement for Grants for Programs for Physician Assistants

The Health Resources and Services Administration announces that applications for Fiscal Year 1988, Grants for Programs for Physician Assistants are being accepted under the authority of section 783(a) of the Public Health Service Act, as amended by Pub. L. 99-129 and invites comments on the Administration's proposed funding priority for AIDS curriculum content in Physician Assistants Programs.

The Administration's budget request for Fiscal Year 1988 does not include funding for this program. This notice regarding applications does not reflect any change in this policy. However, should funds become available unexpectedly for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year.

Section 783(a) authorizes the award of grants to accredited schools of medicine or osteopathy and other public or nonprofit private entities to assist in meeting the cost of planning, developing and operating or maintaining programs for the training of physician assistants as defined under section 701(8) of the Public Health Service Act.

To receive support, programs must meet the requirements of sections 701(8) and 783(a) of the Act and program regulations implementing these sections published at 42 CFR Part 57, Subparts H and I.

Each application must contain or be supported by assurances that the applicant institution has appropriate mechanisms for placing graduates of the training program in positions for which they have been trained.

The Health Professions Training Assistance Act of 1985, Pub. L. 99-129, requires that the regulations for section 701(8) of the PHS Act be amended to (1) limit eligibility to programs that have as their objective the training of graduates who are capable of providing primary health care and (2) require as a condition of approval that applicant programs provide training in the areas of primary care, disease prevention, health promotion, geriatric medicine and home health care. An amendment to the regulations 42 CFR Part 57, Subparts H-I, was published on June 29, 1987, (52 FR 24158) defining these terms.

In determining the priority for funding of applications recommended for approval, consideration will be given to the following factors:

1. The extent to which the applicant develops and uses methods designed to attract, maintain and graduate minority and disadvantaged students;

2. Conducting substantial portions of the programs in a health manpower shortage area(s) or in an area health education center, funded under section 781 of the PHS Act;

3. Establishment of a program in a State which does not have a program; and

4. Conducting a program in conjuction with primary care physician education in a manner which shares educational resources and encourages the use of physician assistants by physicians.

The following criteria will be considered in the review of applications:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in 42 CFR 57.705 and 42 CFR 57.803;

2. The potential effectiveness of the project in carrying out the purposes of section 783 of the PHS Act and 42 CFR, Subparts H;

3. The capability of the applicant to carry out the proposed project;

4. The adequacy of the project's plan for placing graduates in health manpower shortage areas;

5. The soundness of the fiscal plan for assuring effective use of grant funds;

6. The potential of the project to continue on a self-sustaining basis after the period of grant support; and

7. The adequacy of the project's plan to develop and use methods designed to attract and maintain minority and disadvantaged students to train as physician assistants.

Proposed Funding Priority

In addition, a new funding priority is being proposed for projects to expand or develop and implement new curriculum concerning the care of HIV-infected persons, including AIDS patients.

Physician Assistants are increasingly required to provide a wide range of services to HIV-infected persons, including AIDS patients, in both inpatient and outpatient settings. However, organized formal curricular offerings for these trainees are not in place. The proposed priority is designed to encourage new offerings.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-21), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Rm. 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Questions regarding programmatic information should be directed to: Multidisciplinary Resources Development Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Rm. 4C-25, Rockville, Maryland 20857, Telephone: (301) 443-6817.

To receive consideration, applications must meet the deadline of February 9, 1988, which means they must be either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget. The OMB clearance number is 0915-0060.

This program is listed at 13.886 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, as implemented through 45 CFR Part 100.

Interested persons are invited to comment on the proposed funding priority. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1988 award cycle, this

comment period has been reduced to 30 days. All comments received on or before February 4, 1988, will be considered before the final funding priority is established. No funds will be allocated or final selections made until a final notice is published indicating whether the funding priority will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C–25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Dated: December 11, 1987.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88–59 Filed 1–4–88; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940–08–4212–14; A-22634]

Sale of Public Land; Arizona

December 22, 1987.

AGENCY: Bureau of Land Management, Interior.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of sale of public land in Graham County.

SUMMARY: Notice is hereby given that a five acre parcel of public land near Safford has been sold pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976. The direct sale was made to Lowell H. Hively for the following described land:

Gila and Salt River Meridian, Arizona

T. 6 S., R. 27 E.,
Sec. 35, S½SE¼NW¼SW¼.

The purpose of this notice is to inform the public and interested State and local governmental officials of the transfer of public land into private ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 88–16 Filed 1–4–88; 8:45 am]

BILLING CODE 4310–32–M

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 contacting 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 Office and the OMB Interior Desk Officer, Washington, DC. 20503, telephone 202–395–7313.

Title: Incidental Take Applications.

Abstract: Data will be used by the Service to determine whether to allow an incidental taking of marine mammals incidental to specified activities (other than commercial fishing) and to monitor any authorized taking.

Service Form Number: N/A.

Frequency: On occasion.

Description of Respondents: U.S. citizens (defined as including corporations and governmental units controlled by American citizens).

Annual Responses: 21.

Annual Burden Hours: 200.

Service Clearance Officer: James E. Pinkerton, 202–653–7500.

Gary Edwards,

Assistant Director—Fisheries.

[FR Doc. 88–54 Filed 1–4–88; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:30 p.m., c.s.t., on January 26, 1988, at the Jefferson Parish East Bank Council Chamber, 1221 Elmwood Park Boulevard, Harahan, Louisiana.

The Delta Region Preservation Commission was established pursuant to Public Law 92–265, section 907(a) to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park, and in the implementation and development of a general management plan and of a comprehensive interpretive program for the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—General Management Plan
—Hunting and trapping program
—General update of cooperative agreements
—Status of Environmental Education Center at Barataria
—Land acquisition and priorities for development of each park unit (Barataria, French Quarter, Chalmette)
—Park programs; i.e., interpretive, Acadian Culture Centers, exhibits, etc.
—German Heritage Cultural and Genealogical Society
—New Issues

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any members of the public may file a written statement concerning the members to be discussed with the Superintendent, Jean Lafitte National Historical Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact M. Ann Belkov, Superintendent, Jean Lafitte National Historical Park, U.S. Customs House, 423 Canal Street, Room 210, New Orleans, Louisiana 70130–2341, telephone 504/589–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

Date: December 21, 1987.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 88–26 Filed 1–4–88; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 26, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written

comments should be submitted by January 20, 1988.

Beth G. Boland,

Acting Chief of Registration, National Register.

ARIZONA

Yavapai County

Prescott, *Kenwill Apartments*, 119–127 E. Goodwin St.

Garland County

Hot Springs, *Hot Springs High School*, Oak St. between Orange and Olive Sts.

ARKANSAS

Lincoln County

Relfs Bluff, *Mt. Zion Presbyterian Church*, AR 81

Phillips County

Helena, *Altman House*, 1202 Perry St.

ILLINOIS

Christian County

Taylorville, *Taylorville Chautauqua Auditorium*, Manners Park

Cook County

Chicago, *Tri-Taylor Historic District (Boundary Increase)*, Roughly bounded on the N by Oakley, Harrison, and Claremont Sts. and on the SE by Taylor and Oakley Sts.
Oak Park, *Marshall Field and Company Store*, 1144 W. Lake St.
Tinley Park, *Vogt, Karl, Building*, 6811 Hickory St.

Madison County

Troy, *Jarvis, William W., House*, 317 E. Center St.

Peoria County

Peoria, *Peace and Harvest*, Jefferson and Hamilton Sts.

Pike County

Barry vicinity, *McWorter, Free Frank, Grave Site*, Off US 36, 4 mi. E of Barry

KENTUCKY

Grayson County

Caneyville vicinity, *Walnut Grove School*, Walnut Grove Rd.

LOUISIANA

Catahoula Parish

Trinity, *Kirby House*, Spencer and Pearl Sts.

St. John the Baptist Parish

LaPlace, *Montegut Plantation House*, 402 E. Fifth St.

MAINE

Hancock County

Sargentville vicinity, *Pumpkin Island Light Station (Light Stations of Maine MPS)* Pumpkin Island, Eggemoggin Reach
Winter Harbor vicinity, *Winter Harbor Light Station (Light Stations of Maine MPS)*, Mark Island, Winter Harbor

Knox County

Rockport vicinity, *Indian Island Light Station (Light Stations of Maine MPS)*, Indian Island, Rockport Harbor

MISSOURI

Carter County

Phillips Bay Mill (23CT235)
Isaac Kelly Site (23CT111 and 23CT1)

Shannon County

Culpepper—Pummil Site (23SH14/55)
Owl's Bend Site (23SH10)
Pulltite Site (23SH94)
Old Eminence Site (23SH104)

MONTANA

Dawson County

Glendive, *Bell Street Bridge (Glendive MRA)*, W. Bell St.
Glendive, *Blackstock Residence (Glendive MRA)*, 217 W. Towne
Glendive, *First Methodist Episcopal Church and Parsonage (Glendive MRA)*, 209 N. Kendrick
Glendive, *Glendive City Water Filtration Plant (Glendive MRA)*, 420 W. Bell St.
Glendive, *Glendive Heat, Light and Power Company Power Plant (Glendive MRA)*, Clough St.
Glendive, *McCone Residence (Glendive MRA)*, 218 W. Towne
Glendive, *Merrill Avenue Historic District (Glendive MRA)*, W side of Merrill Ave. between S. Douglas St. and W. Clement St., E side of Merrill Ave. between W. Towne and W. Clement
Glendive, *Northern Pacific Railroad Settling Tanks (Glendive MRA)*, Towne and Clough Sts.
Glendive, *Sacred Heart Church (Glendive MRA)*, 316 W. Benham
Glendive, *US Post Office (Glendive MRA)*, 221 N. Kendrick

OHIO

Columbiana County

East Liverpool, *Cawood, Richard L., Residence*, 2600 St. Clair Ave.

Erie County

Sandusky, *Cable Park Historic District*, 1103—1234 Wayne St.

Miami County

Alcony vicinity, *Sheets, Andrew, House*, 6880 Lafevre Rd.

SOUTH CAROLINA

Greenville County

Travelers Rest vicinity, *Salmon, George, House*, SC 414, 1.8 mi. W of US 25

York County

Rock Hill, *US Post Office and Courthouse*, 102 Main St.

WEST VIRGINIA

Greenbrier County

Lewisburg, *Confederate Cemetery at Lewisburg*, Maple St. and US 60, Library Park
Lewisburg, *Maple Street Historic District*, 107–121 Maple St.
Lewisburg, *South Church Street Historic Distict*, South Church St.

Hampshire County

Three Churches, *Scanlon Farm*, Three Churches Run Rd.

Jefferson County

Harpers Ferry vicinity, *Strider Farm*, WV 27

Kanawha County

Charleston, *Starks, Samuel, House*, 413 Shrewsbury St.
St. Albans, *Bank of St. Albans Building*, 80 Olde Main Plaza

Monongalia County

Westover, *St. Mary's Orthodox Church*, W. Park and Holland Aves.

WISCONSIN

Dane County

Stoughton, *Iverson—Johnson House*, 327 E. Washington St.

[FR Doc. 88-27 Filed 1-4-88; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; NAHB Research Foundation; Smart House Project

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the NAHB Research Foundation, Inc. ("NAHB") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on December 4, 1987 disclosing (1) the identities of additional parties to the Smart House Project and (2) the nature and objectives of the Smart House Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to single damages under specified circumstances. Pursuant to section 6(b) of the Act, the identitites of current and additional parties to the Smart House Project, and its general areas of planned activity, are given below.

The Smart House Project is a joint venture project that will be implemented in a series of stages by separate agreements at each stage. The following parties have signed agreements to fund or otherwise participate in the first stage of the venture, which involves, among other things, organizational activities:

AMP, Incorporated
Apple Computer, Inc.
Arco Solar, Inc.
AT&T Technologies, Inc.
Bell Northern Research Ltd.

Bose Corporation
BRInTec Corporation
Broan Mfg. Co., Inc.
Burndy Corporation
Carrier Corporation
Challenger Electrical Equipment Corp.
Dukane Corporation
E. I. duPont de Nemours & Company (Inc.)
Emerson Electric Co.
Federal Pioneer Ltd.
Gas Research Institute
General Electric Company
Honeywell Inc.
Johnson Controls
Kohler Company
Landis & Gyr Metering, Inc.
Lennox Industries Inc.
NAHB Research Foundation, Inc.
National Semiconductor Corporation
NOMA Incorporated
North American Philips Consumer Electronics Corp., on its own behalf and on behalf of Signetics Corporation
Onan Corporation
Pass & Seymour Incorporated
Robertshaw Controls Company
Schlage Lock Company
Scott Instruments Corporation
Scovill Inc.
Shell Development Company (Division of Shell Oil Company)
Siemens-Allis, Inc.
Slater Electric, Inc.
Smart House Development Venture, Inc.
Smart House, L.P.
Sola Basic Industries, Inc.
Southwire Company
Square D Company
Systems Control, Inc.
Whirlpool Corporation
The Wiremold Company

The following entities are serving as advisors to the venture:

AgipPetroli
American Gas Association
Baltimore Gas & Electric Company
Bell Canada
Bell Communications Research, Inc.
Bell South Services
The Bell Telephone Company of Pennsylvania
Boston Edison Company
Clark/Van Voorhis Architects, Inc.
Copper Development Association Inc.
The Dayton Power and Light Company
Delmarva Power and Light Company
Detroit Edison Company
Duke Power Company
Electric Power Research Institute
Gas Research Institute
Home Builders Institute
Hydro Quebec
Illinois Consolidated Telephone Co.
National Association of Home Builders
National Cable Television Association
Oklahoma Gas & Electric Company
Ontario Hydro
Potomac Electric Power Company
Professional Builder
Southern California Edison Company
Southwest Gas
Southwestern Bell Telephone Company
U.S. Dept. of Housing & Urban Dev.
U.S. West
Virginia Electric and Power Company
Washington Gas Light Company
Wisconsin Electric Power Company

The Smart House Project will engage in activities the purpose of which will be to develop a coordinated home control and energy distribution system containing integral telecommunications and advanced safety features. The project is intended to design and develop a set of compatible products, including integrated power and signal cabling to tie home electrical products into a single power and communications network; communications-capable appliances, heating and cooling equipment, utility meters and home electrical and electronic products; electric power conditioning and conversion equipment; controllers and software to make logical decisions, issue control instructions, and regulate the distribution of energy, information and instructions throughout the network; monitoring and control devices to detect and neutralize malfunctions in energy distribution within the home; telephone and CATV interfaces to allow information to be passed to and from the home over telephone and CATV lines; and input and output devices with which users can control and receive information from the network and the devices attached to it.

On June 14, 1985 NAHB filed its original notification pursuant to Section 6(a) of the Act. On September 13, 1985, January 9, 1986, April 25, 1986, July 30, 1986, December 16, 1986, April 3, 1987, June 30, 1987 and August 25, 1987, NAHB filed additional written notifications. The Department of Justice published notices in the **Federal Register** in response to these additional notifications on October 10, 1985 (50 FR 41428), on January 28, 1986 (51 FR 3520), on May 16, 1986 (51 FR 18049), on August 28, 1986 (51 FR 30724), on January 15, 1987 (52 FR 1673), on May 8, 1987 (52 FR 17490), on July 30, 1987 (52 FR 28494) and on September 22, 1987 (52 FR 35596), respectively.

The principal business address of the Smart House Project is 400 Prince Georges Center Boulevard, Upper Marlboro, Maryland 20772–8731.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 88–56 Filed 1–4–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–20,207]

Columbia Northwest Corp., Anchorage Terminal, Anchorage, AK; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated in response to a petition received on October 26, 1987 which was filed by the United Cement, Lime and Gypsum Allied Union and Boilermakers Union on behalf of workers at Columbia Northwest Corporation, Anchorage, Alaska.

All workers were separated from the Anchorage facility more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 21st day of December 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc 88–34 Filed 1–04–88; 8:45 am]

BILLING CODE 4510–30–M

Donaldson Coal Co. et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such

request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 15, 1988.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 15, 1988.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 28th day of December 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Donaldson Coal Co. (UMWA)	Mammoth, WV	12/28/87	12/11/87	20,353	Steam coal.
Donaldson Mining Co. (UMWA)	Cedar Grove, WV	12/28/87	12/10/87	20,354	Coal.
Elkay Coal Co. (UMWA)	Rumcreek, WV	12/28/87	12/15/87	20,355	Coal.
International Paper Co. (workers)	Jay, ME	12/28/87	12/14/87	20,356	Paper.
Kaiser Cement & Longhorn Plant and Quarry (IWNA)	San Antonio, TX	12/28/87	12/11/87	20,357	Cement.
Peabody Coal Co. (UMWA)	Montcoal, WV	12/28/87	12/11/87	20,358	Coal.
Peabody Coal Co. (UMWA)	Twilight, WV	12/28/87	12/15/87	20,359	Coal.
Primeline Industries (URW)	Cuyahoga Falls OH	12/28/87	12/17/87	20,360	Rubber latex tubing.
United Auto Workers, Local 2055 (Teamsters)	Mt. Pleasant, PA	12/28/87	12/14/87	20,361	Union office.

[FR Doc. 88-33 Filed 1-4-88; 8:45 am]

BILLING CODE 4510-30-M

Johnny Castleberry, Inc. et al.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period December 21, 1987 to December 25, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-20,249; Johnny Castleberry, Inc., Pearland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-20,302; King Knob Coal Co., Christopher Div., Morgantown, WV

U.S. imports of steam coal are negligible.

TA-W-20,208; Double A Products Co., Manchester, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-20,222; E.I. Du Pont De Nemours & Co., Inc., Belle, WV

U.S. imports of herbicides declined absolutely and relative to domestic shipment in 1982 compared to 1985 and in first half of 1987 compared to the same period in 1986.

TA-W-20,243; Allied Signal, Inc., Engineered Materials Sector, Fluorine Products Div., Metropolis, IL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-20,246; Bridgton Knitting Mill, Bridgton, ME

U.S. imports of knit fabrics are negligible.

Affirmative Determinations

TA-W-20,258; Britoil Ventures, Inc.

A certification was issued covering all workers of the firm separated on or after November 10, 1986.

TA-W-20,299; Cartex Corp., Doylestown, PA

A certification was issued covering all workers of the firm separated on or after November 3, 1986.

TA-W-20,202; Columbia Northwest Corp., Bellingham Cement Plant, Bellingham, WA

A certification was issued covering all workers of the firm separated on or after September 28, 1986.

TA-W-20,203; Columbia Northwest Corp., Seattle Terminal, Seattle, WA

A certification was issued covering all workers of the firm separated on or after September 28, 1986.

TA-W-20,204; Columbia Northwest Corp., Pasco Terminal, Pasco, WA

A certification was issued covering all workers of the firm separated on or after September 28, 1986.

TA-W-20,205; Columbia Northwest Corp., Portland Terminal, Portland, OR

A certification was issued covering all workers of the firm separated on or after September 28, 1986.

TA-W-20,206; Columbia Northwest Corp., Kendall Quarry, Sumas, WA

A certification was issued covering all workers of the firm separated on or after September 28, 1986.

TA-W-20,238; Henson & Henson Oil, Inc., Headquartered in Okmulgee, OK

A certification was issued covering all workers of the firm separated on or after October 23, 1986.

TA-W-20,238A; Henson & Henson Oil, Inc., Headquartered in Okmulgee, OK and Operating at Various Locations in the State of OK

A certification was issued covering all workers of the firm separated on or after October 23, 1986.

I hereby certify that the aforementioned determinations were issued during the period December 21, 1987–December 25, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 88–32 Filed 1–4–88; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Appointment of Members to the Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of Appointment of Members to the Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines.

This notice announces the appointment of members to the Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines, established pursuant to the authority contained in sections 101 and 102(c) of the Federal Mine Safety and Health Act of 1977 (Act).

The membership of the committee and the categories of interest which are represented are as follows:

Mr. J.W. Brantner—Industry
Dr. Mary Jo Jacobs—Neutral
Dr. John H. Johnson—Neutral
Dr. Roger O. McClellan—Neutral
Mr. Gordon M. Miner—Neutral
Mr. Thomas J. Rabbit—Labor
Dr. James L. Weeks—Labor
Dr. Robert Keith Wilson—Neutral
Mr. Glenn Allen Zumwalt—Industry

The members were selected on the basis of their experience and knowledge in the fields of health and mine safety. They will serve on the committee until June 1988. Mr. Gordon M. Miner will serve as chairman of the committee.

Signed at Washington, DC, this 29th day of December, 1987.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88–30 Filed 1–4–88; 8:45 am]

BILLING CODE 4510–43–M

Advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines; Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of advisory committee meeting and response to comments.

SUMMARY: This notice provides the date, time and place for the first meeting of the Mine Safety and Health Administration Advisory Committee on Standards and Regulations or Diesel-Powered Equipment in Underground Coal Mines, and it responds to comments made by interested parties.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Ballston Tower ₹3, 4015 Wilson Boulevard, Room 631, Arlington, Virginia 22203; phone (703) 235–1910

SUPPLEMENTARY INFORMATION: Pursuant to the authority contained in sections 101 and 102(c) of the Federal Mine Safety and Health Act of 1977 (Act), a public meeting of the advisory Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines will be held between the hours of 9:30 a.m. and 5:00 p.m. on January 19, 20 and 21, 1988 at 1000 N. Glebe Road, Arlington, Virginia.

This nine member advisory committee was formed to advise and make recommendations to the Secretary of Labor on safety and health standards and regulations related to the use of diesels in underground coal mines.

Comments were received from several interested parties regarding the formation of the Advisory Committee. One commenter supported the committee's objectives, and another commenter felt that the committee's scope would be unduly limited by not addressing the appropriateness of use of diesel equipment in underground coal mines.

The Advisory Committee's Charter reflects a broad mandate to assess the safety and health aspects of diesel equipment. The committee will be unhampered in discussing a wide variety of issues which relate to necessary protections for assuring a safe healthful minig environment.

The purpose of the meeting is to organize an agenda for the committee to follow during its six-month tenure. It is expected that the committee will focus on work practices using diesel equipment, approval criteria, and other factors relating to safety and health aspects of diesel equipment use in underground coal mines. The public is invited to attend.

Official records of the meeting will be available for public inspection at the above address.

Signed at Arlington, Virginia, this 29 day of December, 1987.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 88–31 Filed 1–4–88; 8:45 am]

BILLING CODE 4501–43–M

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under the Office of Management and Budget Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before March 1, 1988.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202–786–0233), or Ms. Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3201, Washington, DC 20503, (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, DC 20506, (202–786–0233), from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the numbers of responses; (7) an estimate of the total number of hours needed to fill out the

form. None of these entries are subject to 44 U.S.C. 3504(h).

Category New

Title: Information Survey Form and Instructions for Panelists and Reviewers.

Form Number: _____

Frequency of Collection: Ad Hoc.

Respondents: Individuals: Academic scholars, writers, teachers, and other experts in the humanities.

Use: Peer review process and application evaluation.

Estimated Number of Respondents: 10,000.

Estimated Hours of Respondents To Provide Information: 2,500.

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 88-58 Filed 1-4-88; 8:45 am]

BILLING CODE 7536-01-M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection for the Office of Management and Budget Review

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the "Paperwork Reduction Act of 1980" (Title 44 U.S. Code Chapter 35), this notice announces a collection of information from the public which has been submitted to OMB for clearance. It extends OPM Form 1495, Financial Eligiblity Statement for Student and Summer Aid Programs, which is completed by students applying for Federal positions in the Stay-in-School, Summer Aid and Federal Junior Fellowship Programs. Federal agencies use the information to determine if applicants meet the financial needs criteria required by these programs. There are 10,000 invididuals who respond annually for a total public burden of 2,500 hours. For copies of this proposal call, William C. Duffy, Agency Clearance Officer, on (202) 632-7714.

DATE: Comments on this proposal should be received on or before January 15, 1988.

ADDRESSES: Send or deliver comments to:

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building NW., Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Marsha Frost, (202) 632-0496, Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 88-39 Filed 1-4-88; 8:45 am]

BILLING CODE 6325-01-M

PRESIDENT'S COMMISSION ON PRIVATIZATION

Business Meeting and Hearings

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the President's Commission on Privatization will be held.

DATES AND TIMES: January 7, and 8, 1988. Business Meeting—January 7, beginning at 10:00 a.m. Hearings—January 7, beginning at 2:00 p.m. and January 8, beginning at 9:30 a.m..

ADDRESS: Room 2255 of the Rayburn House Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Wiley Horsley, Commission Staff Manager, 1825 K Street NW., Suite 310, Washington, DC 20006, 202/634-6501.

SUPPLEMENTARY INFORMATION: The purpose of the business meeting is to discuss privatization options in education, military commissaries, prisons, urban mass transit and other matters. The purpose of the hearings is to hear witness testimony relating to contracting out, Agency for International Development programs, health delivery and other areas. The business meeting and the hearings are open to the public.

James C. Miller III,

Director, Office of Management and Budget.

[FR Doc. 87-30206 Filed 12-31-87; 10:42 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25230; File No. SR-DTC-87-18]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Depository Trust Co.

The Depository Trust Company ("DTC"), on December 21, 1987, filed a proposed rule change under section 19(b)(1) of the Securities Exchange Act ("Act") and Rule 19b-4 thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

DTC has stated in its filing that the proposal would extend the termination date of its Same-Day Settlement ("SDFS") Service pilot program from January 31, 1988 to June 30, 1988.[1] The SDFS Service provides depository and transaction settlement services for securities that settle in same-day funds.[2] Previously, same-day funds securities tranactions settled outside the depository environment.

DTC states that the proposal is consistent with the Act, particularly section 17A of the Act, in that it would promote the prompt and accurate clearance and settlement of securities that settle in same-day funds. DTC further states that the proposed rule change would be implemented in a manner designed to safeguard the funds and securities in DTC's custody or control.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments by January 26, 1988. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. SR-DTC-87-18.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

[1] On June 9, 1987, the Commission issued an order approving implementation of the SDFS Service on a temporary basis until January 31, 1988. *See* Securities Exchange Act Rel. No. 24689 (July 9, 1987), 52 FR 26613. If the requested extension to June 30, 1988 is approved, DTC expects to request permanent approval of its SDFS Service at the end of that period.

[2] Same-day funds (also known as "Fed funds") are immediately available for re-delivery on the day of receipt.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 28, 1987.

[FR Doc. 88-48 Filed 1-4-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25232; File No.-NYSE-87-50]

Self-Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Bond Listing Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 7, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("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 changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is revising listing fees for bonds. These new fees will be charged commencing January 1, 1988. These revisions fall into three categories: Initial listings, outstanding issues, and relisting or change in obligor. The new fee schedules are as follows.

INITIAL FEES (RATES PER $ MILLION) ISSUE SIZE ($ MILLION PAR VALUE)

Maturity range	Base $0–$500	Additive [1]		
		$501–$750	$751–$1,000	$1,000+
1 to 5	$100	$75	$50	$25
6 to 14	225	150	100	75
15 to 25	250	175	125	100
26 plus	275	200	150	125

[1] To determine the listing fee, begin with the maturity range and multiply the appropriate fee for the first $0–$500MM par value. Remaining par values at each level are charged at the next par value range rate. To illustrate this, assume that a $1,250,000,000 seven year note is listed on the Exchange. The issuer would be billed $193,750: the first $500MM par value at $225 per million; the next $250MM at $150 per million; the next $250MM at $100 per million; and the final $250MM at $75 per million.

Outstanding Issues

The Exchange has established a new fee structure for listing the currently outstanding, unlisted debt of NYSE issues. This structure, based on the initial fee schedule above, utilizes the remaining life and size of an issue and assesses half of the calculated fee.[1]

To be eligible for this reduced listing fee, the bond issue must be outstanding at least one year. This program is open to all eligible debt for 18 months from the effective date of these fees but will, in addition, be extended for eighteen months to all equity issuers listing on the Exchange for the first time after that date.

Relisting/Change in Obligor

$2500 flat fee (per issue)

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 Statutory Basis for, the Proposed Rule Change

The current fee structure, which was last addressed in January 1985, provides for two ranges of initial listing fees based on maturity (greater than five years, and five years or less). The schedule also includes fees for relisting and for change in obligor.[2]

Effective January 1, 1988, the Exchange is restructuring its bond listing fees to provide new initial fees based on maturity and size. The restructured rates will more equitably allocate listing fees. The new schedule for initial listing fees will represent an overall 6% increase in listing fee revenues. In addition, the new schedule implements a reduced fee structure for NYSE issuers for listing outstanding, unlisted debt and a flat fee for a relisting or change in obligor.

[1] An example of a fee calculation—
30 year issue, $500MM, 4 year remaining:
Initial Unit Fee, $275 (26+ range)
New Unit Fee, 100 (1–5 range, $500 size)
Less 50%, 50
Fee Due, $25,000 ($50 x $500)
% Reduction (this example), 82%.

[2] In its filing the Exchange included copies of the current listing and miscellaneous fee schedule. Copies of the fee schedule are available from the Commission at the address provided in section IV below and from the NYSE.

The statutory basis under the Act is section 6(b)(4) and its requirement that a national securities exchange promulgate rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The 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 statements with respect to the proposed rule change that are filed with the commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW Washington, DC

20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by January 26, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 29, 1987.

[FR Doc. 88-75 Filed 1-4-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No 34-25231; File No. SR-NYSE-87-42]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Rate Increases Affecting Listing Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 30, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("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 the Proposed Rule Change

The Exchange is instituting rate increases affecting initial and continuing listing fees. These new fees will be charged commencing January 1, 1988. The new fees are as follows.

EQUITY LISTING FEES

	1987 price	Proposed price
Initial fees:		
Original listings-charge per company	$33,200	$34,700
Initial listing fees-applies to original listings and to the listing of additional shares (1), new issues to stock, warrants or similar securities which are the subject of subsequent applications:		
Minimum fee	1,330	1,400
Rates per million shares:		
0 to 2 million shares	13,300	13,900
2 to 4 million shares	6,700	7,000
4 to 300 millions shares	3,200	3,300
300 plus million shares	1,700	1,800
Amalgamations (2)	(3)	(3)
Reincorporation and holding company formations	5,000	5,000
Continuing annual fees:		
Fee equal to the greater of the per share fee calculation or the range minimums:		
Per share fee-rate per million shares		
0 to 2 million shares	1,320	1,400
2 plus million shares	665	700
Range minimums:		
1 to 10 million shares	13,200	13,800
10 to 20 million shares	19,760	20,700
20 to 50 million shares	26,410	27,600
50 to 100 million shares	39,520	41,300
100 to 200 million shares	52,730	55,100
200 plus million shares	65,940	68,700
Supplements-minor information changes to previous applications, rate per each	335	400

[1] Fees on shares issued in conjunction with stock splits are capped at $500,000.
[2] Merger of two or more listed companies and the formation of a new company. (One-time original listings charge of $33,200 is not applicable to this type of listing.)
[3] 25% of basic initial fee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(1) The purpose of this change is to offset in part the increased costs of supplying services provided by the Exchange. These costs include manpower, systems, and utilities associated with providing market place services.

(2) The basis under the Act for the proposed rule change is Section 6(b)(4) permitting the rules of an Exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not formally solicited written comments regarding

proposed change, and no unsolicited written comments have been 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 data if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceeding to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that 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 NYSE. All submissions should refer to the file number in the caption above and should be submitted by January 26, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 29, 1987.

[FR Doc. 88-76 Filed 1-4-88; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 38-1]

Recordation of Trade Name; "Better Working Environments, Inc."

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of recordation.

SUMMARY: On September 23, 1987, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Better Working Environments, Inc." was published in the **Federal Register** (52 FR 36129). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views or arguments submitted in writing by any person in opposition to the recordation and received no later than November 24, 1987. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the trade name used by Better Working Environments, Inc., a corporation organized under the laws of the State of Nevada, located at 3716 Scripps Way, Las Vegas, Nevada 89103. The trade name is used in connection with asbestos treatment chemicals including an asbestos penetrating encapsulant and an asbestos removal encapsulant, manufactured in the United States.

DATE: January 5, 1988.

FOR FURTHER INFORMATION CONTACT: Beatrice E. Moore, Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202) 566-5765.

Dated: December 28, 1987.

John F. Atwood,

Acting Chief, Value, Special Programs and Admissibility Branch.

[FR Doc. 88-64 Filed 1-4-88; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 2
Tuesday, January 5, 1988

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).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (eastern time) Tuesday, January 12, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200–C on the Second Floor of the Columbia Plaza Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Section 614 of Volume II of EEOC's Compliance Manual, Retaliation
4. Recommendation for Certification of a 706 Agency

Closed Session

Litigation Authorizations: General Counsel Recommendations

NOTE.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.

Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Acting Executive Officer on (202) 634–6748.

Date: December 30, 1987.

Cynthia Clark Matthews,

Executive Officer (Acting), Executive Secretariat.

This Notice Issued December 30, 1987.

[FR Doc. 87–30207 Filed 12–31–87; 10:26 am]

BILLING CODE 6750–06–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, January 11, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

James McAfee,

Associate Secretary of the Board.

Date: December 31, 1987.

[FR Doc. 87–30215 Filed 12–31–87; 3:06 pm]

BILLING CODE 6210–01–M

federal register

Tuesday
January 5, 1988

Part II

Department of Justice

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing final amendments to its rule on Inmate Discipline and Special Housing Units. These amendments are primarily intended to replace the existing three member "Institution Discipline Committee" with a single person "Discipline Hearing Officer" (DHO).

EFFECTIVE DATE: January 4, 1988.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its final rule on Inmate Discipline and Special Housing Units. Proposed amendments to this rule were published in the **Federal Register** August 27, 1987 (at 52 FR 32478 *et seq.*).

Interested persons were invited to submit comments on the proposed rule. Members of the public may submit comments concerning the present rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

In addition to the previously published proposed amendments, other changes are being made to the final rule. These changes are meant to clarify the scope or intent of the existing rule, or reflect management decisions. Based on the nature of the amendments, the Bureau finds good cause under the Administrative Procedure Act (5 U.S.C. 553) to include these amendments within the final rule without a notice of proposed rulemaking, and an opportunity for public comment. Similarly, because these amendments do not change the general intent or substance of the existing rule, and because no public comment was received on the proposed amendments, the Bureau of Prisons finds good cause under 5 U.S.C. 553(d) to publish these amendments without a delay in the effective date. In recognition of these revisions, and for ease of reading, the Bureau is republishing its entire rule on Inmate Discipline

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons had determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes

1. *Section 541.2*—In § 541.2(a), the word "directly" is deleted, as the investigating officer ordinarily should not be involved in the incident. From § 541.2(b), the sentence, "In institutions with unit management, these staff members will ordinarily be members of the Unit Team", is deleted. The Bureau's implementing instructions to staff states that in institutions with unit management, the authority to hold initial hearings and impose minor sanctions is ordinarily delegated to the staff members of the inmate's unit. Where the institution does not have unit management, the Warden shall delegate those responsibilities to one or more institution staff. Paragraph (c) is reworded, but its intent is unchanged.

2. *Section 541.11*—In § 541.11, Table 1, Item 6, the phrase "The appropriate reviewing official" is added for clarity. Also in this section, in Table 2, the note section is revised to read that staff may suspend disciplinary proceedings for a period not to exceed two calendar weeks while informal resolution is "undertaken and accomplished". This change is made because the Bureau believes that in those situations where informal resolution is a viable alternative, it should be accomplished by the end of the two week period, not merely attempted.

3. *Section 541.13*—In Table 3, and in § 541.13(a)(1), "Item G, Loss of privileges" is added to the list of sanctions the DHO may, in addition to the execution of one or more of Sanctions A through E, impose or suspend for prohibited acts in the greatest severity category. While sanction "G" is new to the greatest severity category, it is not a new sanction in the inmate discipline process. Its use is deemed to be a good tool in certain disciplinary situations, even for high risk offenses. Section 541.13(a)(2), (3), and (4) is reworded, although the intent is unchanged, to clearly define the specific sanctions which may be imposed, executed, or suspended by the Discipline Hearing Officer or the Unit Discipline Committee.

In § 541.13—Table 3, Code 208, the phrase "or destroying, altering, interfering with, improperly using, or damaging any security device, mechanism, or procedure" is added to clarify the scope of the existing language, "tampering with or blocking any lock device". In Code 224, the cited example, "pushing an officer", is deleted because the Bureau believes that the DHO will be able in the fact-finding process to determine the seriousness of an assault. Also in Table 3, immediately below Code 499, the statement, "*Aiding* another person to commit any of these offenses, *attempting* to commit any of these offenses, *and making plans* to commit any of these offenses, in all categories of severity, shall be considered the same as a commission of the offense itself" is added to reiterate the language and scope of § 541.13(b).

Table 4, "Sanctions of the Discipline Hearing Officer", is revised to delete the reference to the "receiving" Regional Director where a present or impending emergency situation requires the immediate transfer of an inmate prior to either a UDC or DHO hearing. The word "receiving" is deleted because a transfer from one region to another will require the approval of both the sending and receiving Regional Directors.

Although not included in the final rule, two of the existing sanctions, pertaining to good time, are greatly restricted for inmates convicted for offenses committed on or after November 1, 1987, the effective date of the Comprehensive Crime Control Act. These inmates are only eligible to receive 54 days of "good conduct time credit" (18 U.S.C. 3624(b)). Because this credit is only given at the end of each year of time served and, once given, is vested, the Bureau's internal staff implementing instructions advise the DHO that the DHO's authority is limited to *recommending* to the Warden or designee that the inmate be denied all or part of the maximum of 54 days good conduct time credit for that year.

In Table 5, "Sanctions for Repetition of Prohibited Acts Within the Same Category", the phrase "additional sanctions are authorized according to the following chart" is clarified to read "increased sanctions are authorized to be imposed by the DHO according to the following chart". The UDC is not authorized to impose those sanctions under the sole purview of the DHO. While the wording in this section has changed, the intent remains the same.

4. *Section 541.15*—In § 541.15(e), the phrase "may drop" is added to indicate the intent of this section and § 541.11.

5. *Section 541.16*—The title of this section is changed to read "Establishment and Functioning of the Discipline Hearing Officer".

6. *Section 541.17*—In § 541.17(f)(2), the word "committee" is deleted because this reference is no longer appropriate when describing a decision by the Discipline Hearing Officer. Except for this change, the intent of this section remains the same.

7. *Section 541.19*—The wording in § 541.19 is revised to state, "An inmate's initial appeal of a decision of the DHO should be filed directly to the appropriate Regional Office". This section also adds a sentence which states, "The inmate should forward a copy of the DHO report or, if not available at the time of filing, should state in his appeal the date of the DHO hearing and the nature of the charges against the inmate". While this requirement is new to the rule, it is consistent with the Bureau's requirement that inmates include appropriate documentation (to establish a date for timely filing) with their appeals. The last sentence of the introductory paragraph to § 541.19 is revised to read, "On appeals, the appropriate reviewing authority shall consider * * *"

While the Region is the initial level of appeal for a DHO decision, the Bureau's internal staff instructions allow Wardens to review DHO hearings and appeals, as the Warden considers necessary, to assure substantial compliance with the provisions of the discipline policy. The Bureau's internal staff instructions also allow the DHO to receive informal complaints abut the procedure, and the correct mistakes locally before the Regional review.

8. *Section 541.21*—The wording in § 541.21(c)(6) is revised to delete the requirement that recommendations for withholding an inmate's exercise periods be from the "DHO or Captain". This section now reads that exercise periods, not to exceed one week, may be withheld from an inmate by order of the Warden, following a hearing, and recommendation, before a person "certified in the discipline hearing officer procedures". This section continues by stating that withholding of exercise periods can only be recommended upon a finding by the "person conducting the hearing" that the actions of the segregated inmate pose a threat to the safety or health conditions of the unit. After careful review of this section, the Bureau has determined that it is not always feasible for the DHO or Captain to hold such a hearing. For example, a DHO assigned to conduct hearings at more than one institution may not be at a given institution when the actions of a segregated inmate are perceived by staff to pose a threat to the safety or health conditions of the unit. In such a situation, another staff member, trained and certified in discipline hearing officer procedures, would conduct the fact-finding hearing, and would be authorized to recommend the withholding of an inmate's exercise periods. The ultimate decision to withhold these exercise periods, however, remains with the Warden.

List of Subjects in 28 CFR Part 541

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), Chapter V of 28 CFR is amended as follows: In Subchapter C, Part 541, Subpart A is added and Subpart B is revised.

Dated: December 29, 1987.

J. Michael Quinlan

Director, Federal Bureau of Prisons.

In Subchapter C, Part 541, add Subpart A and revise Subpart B to read as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

Subpart A—General

Sec.

541.2 Definitions.

Subpart B—Inmate Discipline and Special Housing Units

541.10 Purpose and scope.
541.11 Notice to inmate of Bureau of Prisons rules.
541.12 Inmate rights and responsibilities.
541.13 Prohibited acts and disciplinary severity scale.
541.14 Incident report and investigation.
541.15 Initial hearing.
541.16 Establishment and functioning of the Discipline Hearing Officer.
541.17 Procedures before the Discipline Hearing Officer.
541.18 Dispositions of the Discipline Hearing Officer.
541.19 Appeals from Unit Discipline Committee or Discipline Hearing Officer actions.
541.20 Justification for placement in disciplinary segregation and review of inmates in disciplinary segregation.
541.21 Conditions of disciplinary segregation.
541.22 Administrative detention.
541.23 Protection cases.

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Subpart A—General

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 4001, 4042, 4081, 4082, 4161–4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 541.2 Definitions

(a) *Investigating Officer.* The term Investigating Officer refers to an employee of supervisory level who conducts the investigation concerning alleged charge(s) of inmate misconduct. The Investigating Officer may not be the employee reporting the incident, or one who was involved in the incident in question.

(b) *Unit Discipline Committee (UDC).* The term Unit Disciplinary Committee (UDC) refers to one or more institution staff members delegated by the Warden the authority and duty to hold an initial hearing upon completion of the investigation concerning alleged charge(s) of inmate misconduct. The Warden shall authorize these staff members to impose minor sanctions (G through P) for violation of prohibited act(s).

(c) *Discipline Hearing Officer (DHO).* This term refers to a one-person, independent, discipline hearing officer who is responsible for conducting Institution Discipline Hearings and who imposes appropriate sanctions for incidents of inmate misconduct referred for disposition following the hearing required by § 541.15 before the UDC.

(d) *Segregation Review Official (SRO).* The term Segregation Review Official refers to the individual at each Bureau of Prisons institution assigned to review the status of each inmate housed in disciplinary segregation and administrative detention, as required in §§ 541.20 and 541.22 of this rule.

Subpart B—Inmate Discipline and Special Housing Units

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 4001, 4042, 4081, 4082, 4161–4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 541.10 Purpose and scope.

(a) So that inmates may live in a safe and orderly environment, it is necessary for institution authorities to impose discipline on those inmates whose behavior is not in compliance with Bureau of Prisons rules. The provisions of this rule apply to all persons committed to the care, custody, and control (direct or constructive) of the Bureau of Prisons.

(b) The following general principles apply in every disciplinary action taken:

(1) Only institution staff may take disciplinary action.

(2) Staff shall take disciplinary action at such times and to the degree necessary to regulate an inmate's behavior within Bureau rules and institution guidelines and to promote a safe and orderly institution environment.

(3) Staff shall control inmate behavior in a completely impartial and consistent manner.

(4) Disciplinary action may not be capricious or retaliatory.

(5) Staff may not impose or allow imposition of corporal punishment of any kind.

(6) If it appears at any stage of the disciplinary process that an inmate is mentally ill, staff shall refer the inmate to a mental health professional for determination of whether the inmate is responsible for his conduct or is incompetent. Staff may take no disciplinary action against an inmate whom mental health staff determines to be incompetent or not responsible for his conduct.

(i) A person is not responsible for his conduct if, at the time of the conduct, the person, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. When a person is determined not responsible for his conduct, the Incident Report is to show as a finding that the person did not commit the prohibited act because that person was found not to be mentally responsible for his conduct.

(ii) A person is incompetent if that person lacks the ability to understand the nature of the disciplinary proceedings, or to assist in his defense at the proceedings. When a person is determined incompetent, the disciplinary proceedings shall be postponed until such time as the inmate is able to understand the nature of the disciplinary proceedings and to assist in his defense at those proceedings. If competency is not restored within a reasonable period of time, the Incident Report is to show as a finding that the inmate is incompetent to assist in his or her defense at the disciplinary proceedings.

§ 541.11 Notice to inmate of Bureau of Prisons rules.

Staff shall advise each inmate in writing promptly after arrival at an institution of:

(a) The types of disciplinary action which may be taken by institution staff;

(b) The disciplinary system within the institution and the time limits thereof (see Tables 1 and 2);

(c) The inmate's rights and responsibilities (see § 541.12);

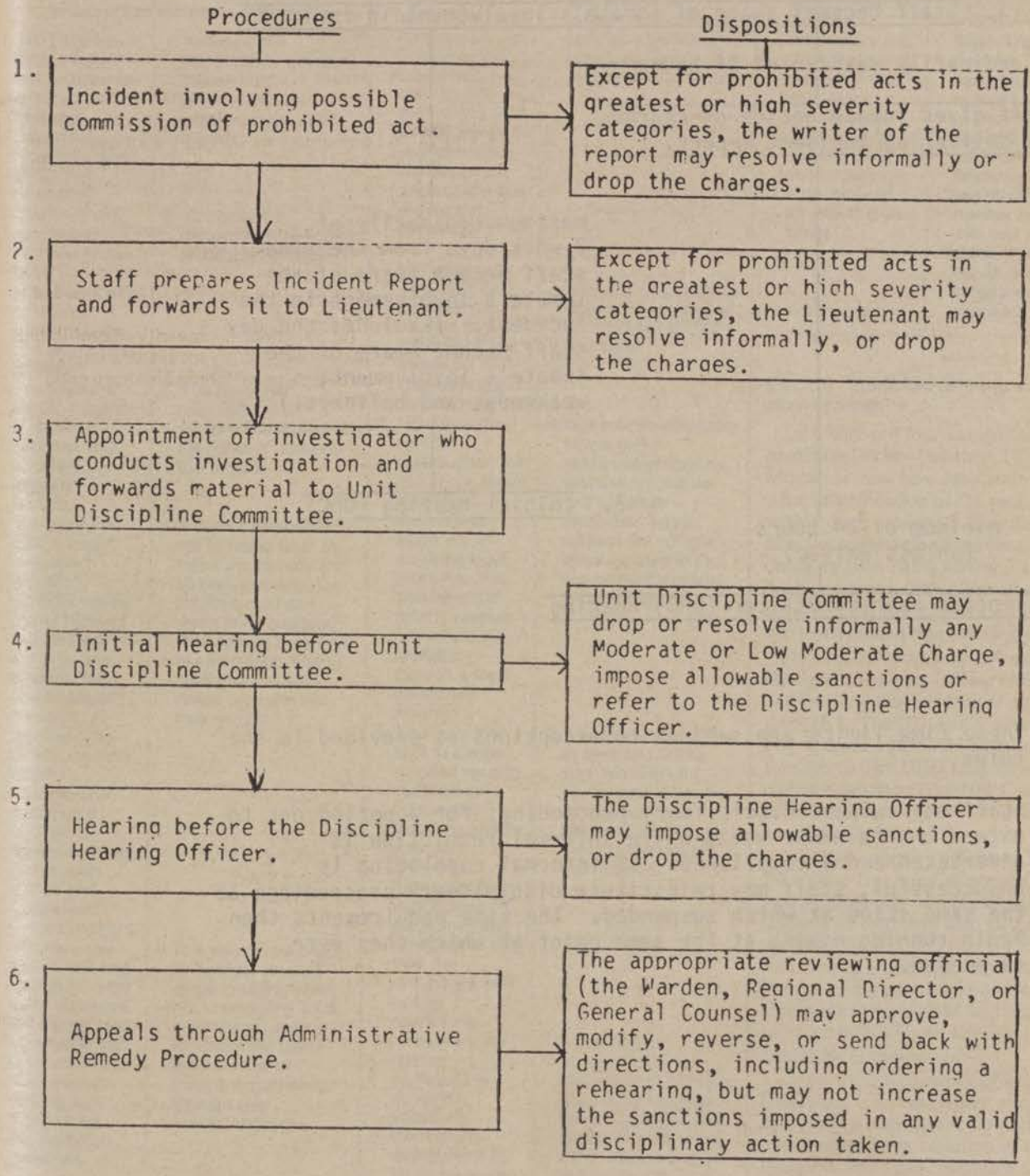
(d) Prohibited acts and disciplinary severity scale (see § 541.13, Tables 3, 4, and 5); and

(e) Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time (see Table 6).

BILLING CODE 4410-05-M

SUMMARY OF DISCIPLINARY SYSTEM

TABLE 1



TIME LIMITS IN DISCIPLINARY PROCESS

TABLE 2

1. Staff becomes aware of inmate's involvement in incident.

ordinarily maximum of 24 hours

2. Staff gives inmate notice of charges by delivering Incident Report.

maximum ordinarily of 3 work days from the time staff became aware of the inmate's involvement in the incident. (Excludes the day staff become aware of the inmate's involvement, weekends, and holidays.)

3. Initial hearing (UDC)

minimum of 24 hours (unless waived)

4. Discipline Hearing Officer (DHO) Hearing

NOTE: These time limits are subject to exceptions as provided in the rules.

Staff may suspend disciplinary proceedings for a period not to exceed two calendar weeks while informal resolution is undertaken and accomplished. If informal resolution is unsuccessful, staff may reinstitute disciplinary proceedings at the same stage at which suspended. The time requirements then begin running again, at the same point at which they were suspended.

BILLING CODE 4410-05-C

§ 541.12 Inmate rights and responsibilities.

Rights	Responsibilities
1. You have the right to expect that as a human being you will be treated respectfully, impartially, and fairly by all personnel.	1. You have the responsibility to treat others, both employees and inmates, in the same manner.
2. You have the right to be informed of the rules, procedures, and schedules concerning the operation of the institution.	2. You have the responsibility to know and abide by them.
3. You have the right to freedom of religious affiliation, and voluntary religious worship.	3. You have the responsibility to recognize and respect the rights of others in this regard.
4. You have the right to health care, which includes nutritious meals, proper bedding and clothing, and a laundry schedule for cleanliness of the same, an opportunity to shower regularly, proper ventilation for warmth and fresh air, a regular exercise period, toilet articles and medical and dental treatment.	4. It is your responsibility not to waste food, to follow the laundry and shower schedule, to maintain neat and clean living quarters, to keep your area free of contraband, and to seek medical and dental care as you may need it.
5. You have the right to visit and correspond with family members, and friends, and correspond with members of the news media in keeping with Bureau rules and institution guidelines.	5. It is your responsibility to conduct yourself properly during visits, not to accept or pass contraband, and not to violate the law or Bureau rules or institution guidelines through your correspondence.
6. You have the right to unrestricted and confidential access to the courts by correspondence (on matters such as the legality of your conviction, civil matters, pending criminal cases, and conditions of your imprisonment).	6. You have the responsibity to present honestly and fairly your petitions, questions, and problems to the court.
7. You have the right to legal counsel from an attorney of your choice by interviews and correspondence.	7. It is your responsibility to use the services of an attorney honestly and fairly.
8. You have the right to participate in the use of law library reference materials to assist you in resolving legal problems. You also have the right to receive help when it is available through a legal assistance program.	8. It is your responsibility to use these resources in keeping with the procedures and schedule prescribed and to respect the rights of other inmates to the use of the materials and assistance.
9. You have the right to a wide range of reading materials for educational purposes and for your own enjoyment. These materials may include magazines and newspapers sent from the community, with certain restrictions.	9. It is your responsibility to seek and utilize such materials for your personal benefit, without depriving others of their equal rights to the use of this material.
10. You have the right to participate in education, vocational training and employment as far as resources are available, and in keeping with your interests, needs, and abilities.	10. You have the responsibity to take advantage of activities which may help you live a successful and law-abiding life within the institution and in the community. You will be expected to abide by the regulations governing the use of such activities.
11. You have the right to use your funds for commissary and other purchases, consistent with institution security and good order, for opening bank and/or savings accounts, and for assisting your family.	11. You have the responsibility to meet your financial and legal obligations, including, but not limited to, court-imposed assessments, fines, and restitution. You also have the responsibility to make use of your funds in a manner consistent with your release plans, your family needs, and for other obligations that you may have.

§ 541.13 Prohibited acts and disciplinary severity scale.

(a) There are four categories of prohibited acts—Greatest, High, Moderate, and Low Moderate (see Table 3 for identification of the prohibited acts within each category). Specific sanctions are authorized for each category (see Table 4 for a discussion of each sanction). Imposition of a sanction requires that the inmate first is found to have committed a prohibited act.

(1) *Greatest category offenses:* The Discipline Hearing Officer shall impose and execute one or more of sanctions A through E. The DHO may also suspend one or more additional sanctions A through G. The DHO may impose and execute sanction F and/or G only in addition to execution of one or more of sanctions A through E.

(2) *High category offenses:* The Discipline Hearing Officer shall impose and execute one or more of sanctions A through M, and may also suspend one or more additional sanctions A through M. The Unit Discipline Committee shall impose and execute one or more of sanctions G through M and may also suspend one or more additional sanctions G through M.

(3) *Moderate category offenses:* The Discipline Hearing Officer shall impose at least one sanction A through N, but may suspend any sanction or sanctions imposed. The Unit Discipline Committee shall impose at least one sanction G through N, but may suspend any sanction or sanctions imposed.

(4) *Low moderate category offenses:* The Discipline Hearing officer shall impose at least on sanction E through P, but may suspend any sanction or sanctions imposed. The Unit Discipline Committee shall impose at least one

sanction G through P, but may suspend any sanction or sanctions imposed

(b) *Aiding* another person to commit any of these offenses, *attempting* to commit any of these offenses, *and making plans* to commit any of these offenses, in all categories of severity, *shall be considered the same as a commission of the offense itself.* In these cases, the letter "A" is combined with the offense code. For example, planning an escape would be considered as Escape and coded 102A. Likewise, attempting the adulteration of any food or drink would be coded 209A.

(c) Suspensions of any sanction cannot exceed six months. Revocation and execution of a suspended sanction require that the inmate first is found to have committed any subsequent prohibited act. Only the Discipline Hearing Officer (DHO) may execute, suspend, or revoke and execute suspension of sanctions A through F. The Discipline Hearing Officer (DHO) or Unit Discipline Committee (UDC) may execute, suspend, or revoke and execute suspensions of sanctions G through P. Revocations and execution of suspensions may be made only at the level (DHO or UDC) which originally imposed the sanction. The DHO now has that authority for suspensions which were earlier imposed by the Inmate Discipline Committee (IDC).

(d) If the Unit Discipline Committee has previously imposed a suspended sanction and subsequently refers a case to the Discipline Hearing Officer, the referral shall include an advisement to the DHO of any intent to revoke that suspension if the DHO finds that the prohibited act was committed. If the DHO then finds that the prohibited act was committed, the DHO shall so advise the Unit Discipline Committee who may then revoke the previous suspension.

(e) The Unit Discipline Committee or Discipline Hearing Officer may impose increased sanctions for repeated, frequent offenses according to the guidelines presented in Table 5.

(f) Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time are presented in Table 6.

TABLE 3—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE

[The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.]

Code	Prohibited acts	Sanctions
	GREATEST CATEGORY	
100	Killing	A. Recommend parole date rescission or retardation.
101	Assaulting any person (includes sexual assault) or an armed assault on the institution's secure perimeter (a charge for assaulting any person at this level is to be used only when serious physical injury has been attempted or carried out by an inmate).	B. Forfeit earned statutory good time (up to 100%) and/or terminate or disallow extra good time (an extra good time sanction may not be suspended).
102	Escape from escort; escape from a secure institution (Security level 2 through 6 and administrative institutions); or escape from a Security level 1 institution *with* violence.	C. Disciplinary Transfer (recommend).
103	Setting a fire (charged with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of Greatest Severity, e.g., in furtherance of a riot or escape; otherwise the charge is properly classified Code 218, or 329).	D. Disciplinary segregation (up to 60 days).
104	Possession, manufacture, or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive or any ammunition.	E. Make monetary restitution.
105	Rioting	F. Withhold statutory good time (Note—can be in addition to A through E—cannot be the only sanction executed).
106	Encouraging others to riot	G. Loss of privileges (Note—can be in addition to A through E—cannot be the only sanction executed).
107	Taking hostage(s)	
108	Possession, manufacture, or introduction of a hazardous tool (Tools most likely to be used in an escape or escape attempt or to serve as weapons capable of doing serious bodily harm to others; or those hazardous to institutional security or personal safety; e.g., hack-saw blade).	
109	Possession, introduction, or use of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff.	
110	Refusing to provide a urine sample or to take part in other drug-abuse testing	
198	Interfering with a staff member in the performance of duties. (*Conduct must be of the Greatest Severity nature.*) This charge is to be used only when another charge of greatest severity is not applicable.	
199	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (*Conduct must be of the Greatest Severity nature.*) This charge is to be used only when another charge of greatest severity is not applicable.	
	HIGH CATEGORY	
200	Escape from unescorted Community Programs and activities and Open Institutions (Security Level 1) and from outside secure institutions—*without* violence.	A. Recommend parole date rescission or retardation.
201	Fighting with another person	B. Forfeit earned statutory good time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time (an extra good time sanction may not be suspended).
202	(Not to be used)	C. Disciplinary transfer (recommend).

TABLE 3—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—Continued

[The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.]

Code	Prohibited acts	Sanctions
203	Threatening another with bodily harm or any other offense	D. Disciplinary segregation (up to 30 days).
204	Extortion, blackmail, protection: Demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing.	E. Make monetary restitution.
205	Engaging in sexual acts	F. Withhold statutory good time.
206	Making sexual proposals or threats to another	G. Loss of privileges: commissary, movies, recreation, etc.
207	Wearing a disguise or a mask	H. Change housing (quarters).
208	Possession of any unauthorized locking device, or lock pick, or tampering with or blocking any lock device (includes keys), or destroying, altering, interfering with, improperly using, or damaging any security device, mechanism, or procedure.	I. Remove from program and/or group activity.
209	Adulteration of any food or drink	J. Loss of job.
210	(Not to be used)	K. Impound inmate's personal property.
211	Possessing any officer's or staff clothing	L. Confiscate contraband.
212	Engaging in, or encouraging a group demonstration	M. Restrict to quarters.
213	Encouraging others to refuse to work, or to participate in a work stoppage	
214	(Not to be used)	
215	Introduction of alcohol into BOP facility	
216	Giving or offering an official or staff member a bribe, or anything of value	
217	Giving money to, or receiving money from, any person for purposes of introducing contraband or for any other illegal or prohibited purposes.	
218	Destroying, altering, or damaging government property, or the property of another person, having a value in excess of $100.00 or destroying, altering, or damaging life-safety devices (e.g., fire alarm) regardless of financial value.	
219	Stealing (theft; this includes data obtained through the unauthorized use of a communications facility, or through the unauthorized access to disks, tapes, or computer printouts or other automated equipment on which data is stored.).	
220	Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill.	
221	Being in an unauthorized area with a person of the opposite sex without staff permission.	
222	Making, possessing, or using intoxicants	
223	Refusing to breathe into a breathalyzer or take part in other testing for use of alcohol.	
224	Assaulting any person (charged with this act only when a less serious physical injury or contact has been attempted or carried out by an inmate).	
298	Interfering with a staff member in the performance of duties. (*Conduct must be of the High Severity nature.*) This charge is to be used only when another charge of high severity is not applicable.	
299	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (*Conduct must be of the High Severity nature.*) This charge is to be used only when another charge of high severity is not applicable.	
	MODERATE CATEGORY	
300	Indecent exposure	A. Recommend parole date rescission or retardation.
301	(Not to be used)	B. Forfeit earned statutory good time up to 25% or up to 30 days, whichever is less, and/or terminate or disallow extra good time (an extra good time sanction may not be suspended).
302	Misuse of authorized medication	C. Disciplinary transfer (recommend).
303	Possession of money or currency, unless specifically authorized, or in excess of the amount authorized.	D. Disciplinary segregation (up to 15 days).
304	Loaning of property or anything of value for profit or increased return	E. Make monetary restitution.
305	Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels.	F. Withhold statutory good time.
306	Refusing to work, or to accept a program assignment	G. Loss of privileges: commissary, movies, recreation, etc.
307	Refusing to obey an order of any staff member (May be categorized and charged in terms of greater severity, according to the nature of the order being disobeyed; e.g., failure to obey an order which furthers a riot would be charged as 105, Rioting; refusing to obey an order which furthers a fight would be charged as 201, Fighting; refusing to provide a urine sample when ordered would be charged as Code 110.	H. Change housing (quarters).
308	Violating a condition of a furlough	I. Remove from program and/or group activity.
309	Violating a condition of a community program	J. Loss of job.

TABLE 3—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—Continued

[The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.]

Code	Prohibited acts	Sanctions
310	Unexcused absence from work or any assignment	K. Impound inmate's personal property
311	Failing to perform work as instructed by the supervisor	L. Confiscate contraband.
312	Insolence towards a staff member	M. Restrict to quarters.
313	Lying or providing a false statement to a staff member	N. Extra duty.
314	Counterfeiting, forging or unauthorized reproduction of any document, article of identification, money, security, or official paper. (May be categorized in terms of greater severity according to the nature of the item being reproduced; e.g., counterfeiting release papers to effect escape, Code 102 or Code 200).	
315	Participating in an unauthorized meeting or gathering	
316	Being in an unauthorized area	
317	Failure to follow safety or sanitation regulations	
318	Using any equipment or machinery which is not specifically authorized	
319	Using any equipment or machinery contrary to instructions or posted safety standards.	
320	Failing to stand count	
321	Interfering with the taking of count	
322	(Not to be used)	
323	(Not to be used)	
324	Gambling	
325	Preparing or conducting a gambling pool	
326	Possession of gambling paraphernalia	
327	Unauthorized contacts with the public	
328	Giving money or anything of value to, or accepting money or anything of value from: another inmate, or any other person without staff authorization.	
329	Destroying, altering, or damaging government property, or the property of another person, having a value of $100.00 or less.	
330	Being unsanitary or untidy; failing to keep one's person and one's quarters in accordance with posted standards.	
331	Possession, manufacture, or introduction of a non-hazardous tool or other non-hazardous contraband (Tool not likely to be used in an escape or escape attempt, or to serve as a weapon capable of doing serious bodily harm to others, or not hazardous to institutional security or personal safety; Other non-hazardous contraband includes such items as food or cosmetics).	
398	Interfering with a staff member in the performance of duties. (*Conduct must be of the Moderate Severity nature.*) This charge is to be used only when another charge of moderate severity is not applicable.	
399	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (*Conduct must be of the Moderate Severity nature*). This charge is to be used only when another charge of moderate severity is not applicable.	
	LOW MODERATE CATEGORY	
400	Possession of property belong to another person	E. Make monetary restitution.
401	Possessing unauthorized amount of otherwise authorized clothing	F. Withhold statutory good time.
402	Malingering, feigning illness	G. Loss of privileges: commissary, movies, recreation, etc.
403	Smoking where prohibited	H. Change housing (quarters).
404	Using abusive or obscene language	I. Remove from program and/or group activity.
405	Tattooing or self-mutilation	J. Loss of job.
406	Unauthorized use of mail or telephone (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G) (May be categorized and charged in terms of greater severity, according to the nature of the unauthorized use; e.g., the telephone is used for planning, facilitating, committing an armed assault on the institution's secure perimeter, would be charged as Code 101, Assault).	K. Impound inmate's personal property.
407	Conduct with a visitor in violation of Bureau regulations (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G).	L. Confiscate contraband.
408	Conducting a business	M. Restrict to quarters.
409	Unauthorized physical contact (e.g., kissing, embracing)	N. Extra duty.
498	Interfering with a staff member in the performance of duties. (*Conduct must be of the Low Moderate Severity nature.*) This charge is to be used only when another charge of low moderate severity is not applicable.	O. Reprimand.
499	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (*Conduct must be of the Low Moderate Severity nature.*) This charge is to be used only when another charge of low moderate severity is not applicable.	P. Warning.

NOTE: *Aiding* another person to commit any of these offenses, *attempting* to commit any of these offenses, *and making plans* to commit any of these offenses, in all categories of severity, shall be considered the same as a commission of the offense itself.

Table 4—Sanctions

1. *Sanctions of the Discipline Hearing Officer:* (upon finding the inmate committed the prohibited act)

(a) *Recommend parole date rescission or retardation.* The DHO may make recommendations to the U.S. Parole Commission for retardation or rescission of parole grants. This may require holding fact-finding hearings upon request of or for the use of the Commission.

(b) *Forfeit earned statutory good time and/or terminate or disallow extra good time.* The statutory good time available for forfeiture is limited to an amount computed by multiplying the number of months served at the time of the offense for which forfeiture action is taken, by the applicable monthly rate specified in 18 U.S.C., section 4161 (less any previous forfeiture or withholding outstanding). Disallowance of extra good time is limited to the extra good time for the calendar month in which the violation occurs. It may not be withheld or restored. The sanction of termination or disallowance of extra good time may not be suspended. Authority to restore forfeited statutory good time is delegated to the Warden. This decision may not be delegated lower than the Associate Warden Level. Limitations on this sanction and eligibility for restoration are based on the severity scale. (See Table 6)

(c) *Recommend disciplinary transfer.* The DHO may recommend that an inmate be transferred to another institution for disciplinary reasons. Where a present or impending emergency requires immediate action, the Warden may recommend for approval of the Regional Director the transfer of an inmate prior to either a UDC or DHO hearing. Transfers for disciplinary reasons prior to a hearing before the UDC or DHO may be used only in emergency situations and only with approval of the Regional Director. When an inmate is transferred under these circumstances, the sending institution shall forward copies of incident reports and other relevant materials with completed investigation to the receiving institution's Discipline Hearing Officer. The inmate shall receive a hearing at the receiving institution as soon as practicable under the circumstances to consider the factual basis of the charge of misconduct and the reasons for the emergency transfer. All procedural requirements applicable to UDC or DHO hearings contained in this rule are appropriate, except that written statements of unavailable witnesses are liberally accepted instead of live testimony.

(d) *Disciplinary segregation.* The DHO may direct that an inmate be placed or retained in disciplinary segregation pursuant to guidelines contained in this rule. Consecutive disciplinary segregation sanctions can be imposed and executed for inmates charged with and found to have committed offenses that are part of different acts only. Specific limits on time in disciplinary segregation are based on the severity scale. (See Table 6)

(e) *Make monetary restitution.* The DHO may direct that an inmate reimburse the U.S. Treasury for any damages to U.S. Government property that the individual is determined to have caused or contributed to.

(f) *Withholding statutory good time.* The DHO may direct that an inmate's good time be withheld. Withholding of good time should not be applied as a universal punishment to all persons in disciplinary segregation status. Withholding is limited to the total amount of good time creditable for the single month during which the violation occurs. Some offenses, such as refusal to work at an assignment, may be recurring, thereby permitting, when ordered by the DHO, consecutive withholding actions. When this is the intent, the DHO shall specify at the time of the initial DHO hearing that good time may be withheld until the inmate elects to return to work. During the running of such a withholding order, the DHO shall review the offense with the inmate on a monthly basis. For an on-going offense, staff need not prepare a new Incident Report or conduct an investigation or initial hearing (UDC). The DHO shall provide the inmate an opportunity to appear in person and to present a statement orally or in writing. The DHO shall document its action on, or by an attachment to, the initial Institution Discipline report. If further withholding is ordered, the DHO shall advise the inmate of the inmate's right to appeal through the Administrative Remedy Procedure (Part 542). Only the Warden may restore withheld statutory good time. This decision may not be delegated lower than the Associate Warden level. Restoration eligibility is based on the severity scale. (See Table 6)

2. *Sanctions of the Discipline Hearing Officer/Unit Discipline Committee:* (upon finding the inmate committed the prohibited act)

(g) *Loss of privileges: Commissary, movies, recreation, etc.* The DHO or UDC may direct that an inmate forego specific privileges for a specified period of time. Ordinarily, loss of privileges is used as a sanction in response to an abuse of that privilege; e.g., loss of telephone privileges for a specified period of time for an abuse of the telephone privilege. However, loss of leisure privileges, such as movies, television, and recreation, may be appropriate sanctions in some cases for misconduct which is not related to the privilege.

(h) *Change housing (quarters).* The DHO or UDC may direct that an inmate be removed from current housing and placed in other housing.

(i) *Remove from program and/or group activity.* The DHO or UDC may direct that an inmate forego participating in any program or group activity for a specified period of time.

(j) *Loss of job.* The DHO or UDC may direct that an inmate be removed from present job and/or be assigned to another job.

(k) *Impound inmate's personal property.* The DHO or UDC may direct that an inmate's personal property be stored in the institution (when relevant to offense) for a specified period of time.

(l) *Confiscate contraband.* The DHO or UDC may direct that any contraband in the possession of an inmate be confiscated and disposed of appropriately.

(m) *Restrict quarters.* The DHO or UDC may direct that an inmate be confined to quarters or in its immediate area for a specified period of time.

(n) *Extra duty.* The DHO or UDC may direct that an inmate perform tasks other than those performed during regularly assigned institutional job.

(o) *Reprimand.* The DHO or UDC may reprimand an inmate either verbally or in writing.

(p) *Warning.* The DHO or UDC may verbally warn an inmate regarding committing prohibited act(s)

TABLE 5.—SANCTIONS FOR REPETITION OF PROHIBITED ACTS WITHIN SAME CATEGORY

[When the Unit Discipline Committee or DHO finds that an inmate has committed a prohibited act in the Low Moderate, Moderate, or High category, and when there has been a repetition of the same offense(s) within recent months (offenses for violation of the same code), increased sanctions are authorized to be imposed by the DHO according to the following chart. (Note: An informal resolution may not be considered as a prior offense for purposes of this chart.)]

Category	Prior offense (same code) within time period	Frequency of repeated offense	Sanction permitted
Low moderate (400 series)	6 months	2d offense	Low Moderate Sanctions, plus 1. Disciplinary segregation, up to 7 days. 2. Forfeit earned SGT up to 10% or up to 15 days, whichever is less, and/or terminate or disallow extra good time (EGT) (an EGT sanction may not be suspended).

TABLE 5.—SANCTIONS FOR REPETITION OF PROHIBITED ACTS WITHIN SAME CATEGORY—Continued

[When the Unit Discipline Committee or DHO finds that an inmate has committed a prohibited act in the Low Moderate, Moderate, or High category, and when there has been a repetition of the same offense(s) within recent months (offenses for violation of the same code), increased sanctions are authorized to be imposed by the DHO according to the following chart. (Note: An informal resolution may not be considered as a prior offense for purposes of this chart.)]

Category	Prior offense (same code) within time period	Frequency of repeated offense	Sanction permitted
Moderate (300 series)	12 months	3d offense, or more	Any sanctions available in Moderate (300) and Low Moderate (400) series.
		2d offense	Moderate Sanctions (A,C,E-N), plus 1. Disciplinary segregation, up to 21 days. 2. Forfeit earned SGT up to 37½% or up to 45 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
High (200 series)	18 months	3d offense, or more	Any sanctions available in Moderate (300) and High (200) series.
		2d offense	High Sanctions (A,C,E-M), plus 1. Disciplinary segregation, up to 45 days. 2. Forfeit earned SGT up to 75% or up to 90 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		3d offense, or more	Any sanctions available in High (200) and Greatest (100) series.

TABLE 6.—SANCTIONS BY SEVERITY OF PROHIBITED ACT, WITH ELIGIBILITY FOR RESTORATION OF FORFEITED AND WITHHELD STATUTORY GOOD TIME

Severity of act	Sanctions	Max. amt. forf. SGT	Max. amt. W/hd SGT	Elig. restoration forf. SGT	Elig. restoration W/hd/ SGT	Max. dis seg.
Greatest	A-F	100%	Good time creditable for single month during which violation occurs. Applies to all categories..	24 mos	18 mos	60 days.
High	A-M	50% or 60 days, whichever is less.		18 mos	12 mos	30 days.
Moderate	A-N	25% or 30 days, whichever is less.		12 mos	6 mos	15 days.
Low Moderate	E-P	N/A		N/A (1st offense) 6 mos. (2nd or 3rd offense in same category within six months).	3 mos	N/A (1st offense). 7 days (2nd offense). 15 days (3rd offense).

Note.—Restoration will be approved at the time of initial eligibility only when the inmate has shown a period of time with improved good behavior. When the Warden or his delegated representative denies restoration of forfeited or withheld statutory good time, the unit team shall notify the inmate of the reasons for denial. The unit team shall establish a new eligibility date, not to exceed six months from the date of denial.

An inmate with an approaching parole effective date, or an approaching mandatory release or expiration date who also has forfeited good time may be placed in a Community Treatment Center only if that inmate is otherwise eligible under Bureau policy, and if there exists a legitimate documented need for such placement. The length of stay at the Community Treatment Center is to be held to the time necessary to establish residence and employment.

§ 541.14 Incident report and investigation.

(a) *Incident Report.* The Bureau of Prisons encourages informal resolution (requiring consent of both parties) of incidents involving violations of Bureau regulations. However, when staff witnesses or has a reasonable belief that a violation of Bureau regulations has been committed by an inmate, and when staff considers informal resolution of the incident inappropriate or unsuccessful, staff shall prepare an Incident Report and promptly forward it to the appropriate Lieutenant. Except for prohibited acts in the Greatest or High Severity Category, the Lieutenant may informally dispose of the Incident Report or forward the Incident Report for investigation consistent with this section. The Lieutenant shall expunge the inmate's file of the Incident Report if informal resolution is accomplished. Only the DHO may make a final

disposition on a prohibited act in the Greatest Severity Category.

(b) *Investigation.* Staff shall conduct the investigation promptly unless circumstances beyond the control of the investigator intervene.

(1) When it appears likely that the incident may be the subject of criminal prosecution, the investigating officer shall suspend the investigation, and staff may not question the inmate until the Federal Bureau of Investigation or other investigative agency interviews have been completed or until the agency responsible for the criminal investigation advises that staff questioning may occur.

(2) The inmate may receive a copy of the Incident Report prior to being seen by the investigating agency. The investigating officer (Bureau of Prisons) shall give the inmate a copy of the Incident Report at the beginning of the investigation, unless there is good cause for delivery at a later date, such as absence of the inmate from the institution or a medical condition which argues against delivery. If the investigation is delayed for any reason, any employee may deliver the charge(s) to the inmate. The staff member shall note the date and time the inmate received a copy of the Incident Report. The investigator shall also read the charge(s) to the inmate and ask for the inmate's statement concerning the incident unless it appears likely that the incident may be the subject of criminal prosecution. The investigator shall advise the inmate of the right to remain silent at all stages of the disciplinary process but that the inmate's silence may be used to draw an adverse inference against the inmate at any stage of the institutional disciplinary process. The investigator shall also inform the inmate that the inmate's silence alone may not be used to support a finding that the inmate has committed a prohibited act. The investigator shall then thoroughly investigate the incident. The investigator shall record all steps and actions taken on the Incident Report and forward all relevant material to the staff holding the initial hearing. The inmate does not receive a copy of the investigation. However, if the case is ultimately forwarded to the Discipline Hearing Officer, the DHO shall give a copy of the investigation and other relevant materials to the inmate's staff representative for use in presentation on the inmate's behalf.

§ 541.15 Initial hearing.

The Warden shall delegate to one or more institution staff members the authority and duty to hold an initial hearing upon completion of the investigation. In order to ensure impartiality, the appropriate staff member(s) (hereinafter usually referred to as the Unit Discipline Committee (UDC)) may not be the reporting or investigating officer or a witness to the incident, or play any significant part in having the charges referred to the UDC. However, a staff member witnessing an incident may serve on the UDC where virtually every staff member in the institution witnesses the incident in whole or in part. If the UDC finds at the initial hearing that an inmate has committed a prohibited act, the UDC may impose minor dispositions and sanctions. When an alleged violation of Bureau rules is serious and warrants consideration for other than minor sanctions, the UDC shall refer the charges to the Discipline Hearing Officer for further hearing. The UDC must refer all greatest category charges to the DHO. The following minimum standards apply to initial hearings in all institutions.

(a) Staff shall give each inmate charged with violating a Bureau rule a written copy of the charge(s) against the inmate, ordinarily within 24 hours of the time staff became aware of the inmate's involvement in the incident.

(b) Each inmate so charged is entitled to an initial hearing before the UDC, ordinarily held within three work days from the time staff became aware of the inmate's involvement in the incident. This three work day period excludes the day staff became aware of the inmate's involvement in the incident, weekends, and holidays.

(c) The inmate is entitled to be present at the initial hearing except during deliberations of the decision maker(s) or when institutional security would be jeopardized by the inmate's presence. The UDC shall clearly document in the record of the hearing reasons for excluding an inmate from the hearing. An inmate may waive the right to be present at this hearing provided that the waiver is documented by staff and reviewed by the UDC. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The UDC may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the UDC shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined.

(d) The inmate is entitled to make a statement and to present documentary evidence in the inmate's own behalf.

(e) The Unit Discipline Committee may drop or informally resolve any Moderate or Low Moderate charge. The UDC shall expunge the inmate's file of the Incident Report if informal resolution is accomplished.

(f) The Unit Discipline Committee shall consider all evidence presented at the hearing and shall make a decision based on at least some facts, and if there is conflicting evidence, it must be based on the greater weight of the evidence. The UDC shall take one of the following actions:

(1) Find that the inmate committed the prohibited act charged and/or a similar prohibited act if reflected in the Incident Report;

(2) Find that the inmate did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report; or

(3) Refer the case to the DHO for further hearing:

The UDC shall give the inmate a written copy of the decision and disposition by the close of business the next work day. Any action taken as a minor disposition is reviewable under the Administration Remedy Procedure (see Part 542 of this Chapter).

(g) The UDC shall prepare a record of its proceedings which need not be verbatim. A record of the hearing and supporting documents are kept in the inmate's file.

(h) When an alleged violation of Bureau rules is serious and warrants consideration for other than minor sanctions (G through P), the UDC shall refer the charge(s) without indication of findings as to commission of the alleged violation to the Discipline Hearing Officer (DHO) for hearing and disposition. The UDC shall forward copies of all relevant documents to the DHO with a brief statement of reasons for the referral along with any recommendations for appropriate disposition if the DHO finds the inmate has committed the act charged and/or a similar prohibited act. The inmate whose charge is being referred to the Discipline Hearing Officer may be retained in administrative detention or other restricted status, but the UDC may not impose a final disposition if the matter is being referred to the DHO.

(i) When charges are to be referred to the Discipline Hearing Officer, the UDC shall advise the inmate of the rights afforded at a hearing before the DHO. The UDC shall ask the inmate to indicate a choice of staff representative, if any, and the names of any witnesses

the inmate wishes to be called to testify at the hearing and what testimony they are expected to provide. The UDC shall advise the inmate that the inmate may waive the right to be present at the Institution Discipline hearing, but still elect to have witnesses and/or a staff representative appear in the inmate's behalf at this hearing.

(j) When the Unit Discipline Committee holds a full hearing and determines that the inmate did not commit a prohibited act of High, Moderate or Low Moderate Severity, the UDC shall expunge the inmate's file of the Incident Report and related documents. The UDC must refer to the Discipline Hearing Officer all incidents involving prohibited acts of Greatest Severity.

(k) The UDC may extend time limits imposed in this section for a good cause shown by the inmate or staff and documented in the record of the hearing.

§ 541.16 Establishment and functioning of the Discipline Hearing Officer.

(a) Each Bureau of Prison institution shall have an independent hearing officer (DHO) assigned to conduct administrative fact-finding hearings covering alleged acts of misconduct and violations of prohibited acts, including those acts which could result in criminal charges. In the event of a serious disturbance or other emergency, of if an inmate commits an offense in the presence of the DHO, an alternate Discipline Hearing Officer will be appointed to conduct hearings with approval of the appropriate Regional Director. If the institution's DHO is not able to conduct hearings, the Warden shall arrange for another DHO to conduct the hearings. This person must be trained and certified as a DHO, and meet the other requirements for DHO.

(b) In order to insure impartiality, the DHO may not be the reporting officer, investigating officer, or UDC member, or a witness to the incident or play any significant part in having the charge(s) referred to the DHO.

(c) The Discipline Hearing Officer shall conduct hearings, make findings, and impose appropriate sanctions for incidents of inmate miscounduct referred for disposition following the hearing required by § 541.15 before the UDC. The DHO may not hear any case or impose any sanctions in a case not heard and referred by the UDC. Only the Discipline Hearing Officer shall have the authority to impose or suspend sanctions A through F.

(d) The Warden at each institution shall designate a staff member, hereinafter called the Segregation Review Official (SRO), to conduct reviews of inmates placed in disciplinary segregation and administrative detention in accordance with the requirements of § 541.20 and § 541.22.

§ 541.17 Procedures before the Discipline Hearing Officer.

The Discipline Hearing Officer shall proceed as follows:

(a) The Warden shall give an inmate advance written notice of the charge(s) against the inmate no less than 24 hours before the inmate's appearance before the Discipline Hearing Officer unless the inmate is to be released from custody within that time. An inmate may waive in writing the 24-hour notice requirement.

(b) The Warden shall provide an inmate the service of a full time staff member to represent the inmate at the hearing before the Discipline Hearing Officer should the inmate so desire. The Warden, the DHO or alternate DHO, the reporting officer, investigating officer, a witness to the incident, and UDC members involved in the case may not act as staff representative. The Warden may exclude staff from acting as staff representative in a particular case when there is a potential conflict in roles. The staff representative shall be available to assist the inmate if the inmate desires by speaking to witnesses and by presenting favorable evidence to the DHO on the merits of the charge(s) or in extenuation or mitigation of the charge(s). The DHO shall arrange for the presence of the staff representative selected by the inmate. If the staff member selected declines or is unavailable because of absence from the institution, the inmate has the option of selecting another representative, or in the case of an absent staff member of waiting a reasonable period for the staff member's return, or of proceeding without a staff representative. When several staff members decline this role, the Warden shall promptly appoint a staff representative to assist the inmate. The DHO shall afford a staff representative adequate time to speak with the inmate and interview requested witnesses where appropriate. While it is expected that a staff member will have had ample time to prepare prior to the hearing, delays in the hearing to allow for adequate preparation may be ordered by the Discipline Hearing Officer. When it appears that the inmate is not able to properly make a presentation on his own behalf (for example, an illiterate inmate), the Warden shall appoint a staff representative for the inmate, even if one is not requested.

(c) The inmate is entitled to make a statement and to present documentary evidence in the inmate's own behalf. An inmate has the right to submit names of requested witnesses and have them called to testify and to present documents in the inmate's behalf, provided the calling of witnesses or the disclosure of documentary evidence does not jeopardize or threaten institutional or an individual's security. The DHO shall call those witnesses who have information directly relevant to the charge(s) and who are reasonably available. This may include witnesses from outside of the institution. The inmate charged may be excluded during the appearance of an outside witness. The appearance of the outside witness should be in an area of the institution in which outside visitors are usually allowed. The DHO need not call repetitive witnesses. The reporting officer and other adverse witnesses need not be called if their knowledge of the incident is adequately summarized in the Incident Report and other investigative materials supplied to the DHO. The DHO shall request submission of written statements from unavailable witnesses who have information directly relevant to the charge(s). The DHO shall document reasons for declining to call requested witnesses in the DHO report, or, if the reasons are confidential, in a separate report, not available to the inmate. The inmate's staff representative, or when the inmate waives staff representation, the DHO, shall question witnesses requested by the inmate who are called before the DHO. The inmate who has waived staff representation may submit questions for requested witnesses in writing to the DHO. The inmate may not question any witness at the hearing.

(d) An inmate has the right to be present throughout the DHO hearing except during a period of deliberation or when institutional security would be jeopardized. The DHO must document in the record the reason(s) for excluding an inmate from the hearing. An inmate may waive the right to be present at the hearing, provided that the waiver is documented by staff and reviewed by the DHO. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The DHO may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the Discipline Hearing Officer shall conduct

a hearing in the inmate's absence at the institution in which the inmate was last confined. When an inmate returns to custody following absence during which sanctions were imposed by the DHO (or the predecessor Institution Discipline Committee (IDC)), the Warden shall have the charges reheard before the Discipline Hearing Officer ordinarily within 60 days after the inmate's arrival at the institution to which the inmate is designated after return to custody, and following appearance before the Unit Discipline Committee at that institution. The UDC shall ensure that the inmate has all rights required for appearance before the Discipline Hearing Officer, including delivery of charge(s), advisement of the right to remain silent and other rights to be exercised before the Discipline Hearing Officer. All the applicable procedural requirements for hearings before the Discipline Hearing Officer apply to this rehearing, except that written statements of witnesses not readily available may be liberally used instead of in-person witnesses. The DHO upon rehearing may affirm the earlier action taken, may dismiss the charge(s), may modify the finding of the original DHO as to the offense which was committed, or may modify but may not increase the sanctions previously imposed in the inmate's absence.

(e) The DHO may refer the case back to the UDC for further information or disposition. The DHO may postpone or, at any time prior to making a decision as to whether or not a prohibited act was committed, may continue the hearing until a later date whenever further investigation or more evidence is needed. A postponement or continuance must be for good cause (determined by the DHO) shown by the inmate or staff and should be documented in the record of the hearing.

(f) The DHO shall consider all evidence presented at the hearing. The decision of the DHO shall be based on at least some facts, and if there is conflicting evidence, it must be based on the greater weight of the evidence. The DHO shall find that the inmate either:

(1) Committed the prohibited act charged and/or a similar prohibited act if reflected in the Incident Report; or

(2) Did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report.

When a disciplinary decision is based on confidential informant information, the UDC or DHO shall document, ordinarily in the hearing report, the finding as to the reliability of each confidential informant relied on *and the factual basis for that finding.* When it appears that this documentation in the report would reveal the confidential informant's identity, the finding as to the reliability of each confidential informant relied on and the factual basis for that finding shall be made part of the hearing record in a separate report, prepared by the UDC chairman or DHO, not available to the inmate.

(g) The Discipline Hearing Officer shall prepare a record of the proceedings which need not be verbatim. This record must be sufficient to document the advisement of inmate rights, the DHO's findings, the DHO's decision and the specific evidence relied on by the DHO, and must include a brief statement of the reasons for the sanctions imposed. The evidence relied upon, the decision, and the reasons for the actions taken must be set out in specific terms unless doing so would jeopardize institutional security. The DHO shall give the inmate a written copy of the decisions and disposition, ordinarily within 10 days of the DHO's decision.

(h) A record of the hearing and supporting documents are to be kept in the inmate central file.

(i) The Discipline Hearing Officer shall expunge an inmate's file of the Incident Report and related documents following a DHO finding that the inmate did not commit a prohibited act. The requirement for expunging the inmate's file does not preclude maintaining for research purposes copies of disciplinary actions resulting in "not guilty" findings in a master file separate from the inmate's institution file. However, institution staff may not use or allow the use of the contents of this master file in a manner which would adversely affect the inmate. Likewise, the expungement requirement does not require the destruction of medical reports or other reports relating to a particular inmate which must be maintained to document medical or other treatment given in a special housing unit. If an inmate's conduct during one continuous incident may constitute more than one prohibited act, and if the incident is reported in a single Incident Report, and if the DHO finds the inmate has not committed every prohibited act charged, or if the DHO finds that the inmate has committed a prohibited act(s) other than the act(s) charged, then the DHO shall record those findings clearly and shall change the Incident Report to show only the incident and code references to charges which were proved. Institution staff may not use the existence of charged but unproved misconduct against the inmate.

§ 541.18 Dispositions of the Discipline Hearing Officer.

The Discipline Hearing Officer has available a broad range of sanctions and dispositions following completion of the hearing. The Discipline Hearing Officer may do any of the following:

(a) Dismiss any charge(s) upon a finding that the inmate did not commit the prohibited act(s). The DHO shall order the record of charge(s) expunged upon such finding.

(b) Impose any of sanctions A through P as provided in § 541.13.

(c) Suspend the execution of a sanction it imposes as provided in § 541.13.

§ 541.19 Appeals from Unit Discipline Committee or Discipline Hearing Officer Actions.

At the time the Unit Discipline Committee or Discipline Hearing Officer gives an inmate written notice of its decision, the UDC or DHO shall also advise the inmate that the inmate may appeal the decision under Administrative Remedy Procedures (see Part 542 of this Chapter). An inmate's initial appeal of a decision of the DHO should be filed directly to the appropriate Regional Office. The inmate should forward a copy of the DHO report or, if not available at the time of filing, should state in his appeal the date of the DHO hearing and the nature of the charges against the inmate. On appeals, the appropriate reviewing official (the Warden, Regional Director, or General Counsel) may approve, modify, reverse, or send back with directions, including ordering a rehearing, any disciplinary action of the Unit Discipline Committee or Discipline Hearing Officer but may not increase any valid sanction imposed. On appeals, the appropriate reviewing authority shall consider:

(a) Whether the Unit Discipline Committee or the Discipline Hearing Officer substantially complied with the regulations on inmate discipline;

(b) Whether the Unit Discipline Committee or Discipline Hearing Officer based its decision on some facts, and if there was conflicting evidence, whether the decision was based on the greater weight of the evidence; and

(c) Whether an appropriate sanction was imposed according to the severity level of the prohibited act, and other relevant circumstances.

§ 541.20 Justification for placement in disciplinary segregation and review of inmates in disciplinary segregation.

(a) Except as provided in paragraph (b) of this section, an inmate may be placed in disciplinary segregation only

by order of the Discipline Hearing Officer following a hearing in which the inmate has been found to have committed a prohibited act in the Greatest, High, or Moderate Category, or a repeated offense in the Low Moderate Category. The DHO may order placement in disciplinary segregation only when other available dispositions are inadequate to achieve the purpose of punishment and deterrence necessary to regulate an inmate's behavior within acceptable limits.

(b) The Warden may temporarily (not exceeding five days) move an inmate to a more secure cell (which may be in an area ordinarily set aside for disciplinary segregation and which therefore requires the withdrawal of privileges ordinarily afforded in administrative detention status, until a hearing before the DHO can be held) who (1) is causing a serious disruption (threatening life, serious bodily harm, or property) in administrative detention, (2) cannot be controlled within the physical confines of administrative detention, and (3) upon advice of appropriate medical staff, does not require confinement in the institution hospital for mental or physical treatment, or who would ordinarily be housed in the institution hospital for mental or physical treatment, but who cannot safely be housed there because the hospital does not have a room or cell with adequate security provisions. The Warden may delegate this authority no further than to the official in charge of the institution at the time the move is necessary.

(c) The Segregation Review Official (SRO) (see § 541.16(d)) shall conduct a hearing and formally review the status of each inmate who spends seven continuous days in disciplinary segregation and thereafter shall review these cases on the record in the inmate's absence each week and shall conduct a hearing and formally review these cases at least once every 30 days. The inmate appears before the SRO at the 30-day hearings, unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when disciplinary segregation continues beyond 30 days. The assessment, submitted to the SRO in a written report, shall address the inmate's adjustment to surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals if segregation continues for this extended period.

(d) The Segregation Review Official may release an inmate from disciplinary segregation earlier than the sanction initially imposed upon finding that continuation in disciplinary segregation is no longer necessary to regulate the inmate's behavior within acceptable limits or for fulfilling the purpose of punishment and deterrence which initially resulted in the inmate's placement in disciplinary segregation status. The SRO may not increase any previously imposed sanction.

§ 541.21 Conditions of disciplinary segregation.

(a) Disciplinary segregation is the status of confinement of an inmate housed in a special housing unit in a cell either alone or with other inmates, separated from the general population. Inmates housed in disciplinary segregation have significantly fewer privileges than those housed in administrative detention.

(b) The Warden shall maintain for each segregated inmate basic living levels of decency and humane treatment, regardless of the purpose for which the inmate has been segregated. Living conditions may not be modified for the purpose of reinforcing acceptable behavior and different levels of living arrangements will not be established. Where it is determined necessary to deprive an inmate of a usually authorized item, staff shall prepare written documentation as to the basis for this action, and this document will be signed by the Warden, indicating the Warden's review and approval.

(c) The basic living standards for segregation are as follows:

(1) *Segregation Conditions.* The quarters used for segregation must be well-ventilated, adequately lighted, appropriately heated and maintained in a sanitary condition at all times. All cells must be equipped with beds. Strip cells may not be a part of the segregation unit. Any strip cells which are utilized must be a part of the medical facility and under the supervision and control of the medical staff.

(2) *Cell Occupancy.* The number of inmates confined to each cell or room in segregation should not exceed the number for which the space was designated. The Warden may approve excess occupancy if the Warden finds there is a pressing need for this action, and that other basic living standards of this subsection can still be maintained.

(3) *Clothing and Bedding.* An inmate in segregation may wear normal institution clothing but may not have a belt. Staff shall furnish a mattress and bedding. Cloth or paper slippers may be substituted for shoes at the discretion of the Warden. An inmate may not be segregated without clothing, mattress, blankets and pillow, except when prescribed by the medical officer for medical or psychiatric reasons. Inmates in special housing status will be provided, as nearly as practicable, the same opportunity for the issue and exchange of clothing, bedding, and linen, and for laundry as inmates in the general population. Exceptions to this procedure may be permitted only when found necessary by the Warden or designee. An exception, and the reasons for this, must be recorded in the unit log.

(4) *Food.* Staff shall give a segregated inmate nutritionally adequate meals, ordinarily from the menu of the day for the institution. Staff may dispense disposable utensils when necessary.

(5) *Personal Hygiene.* Segregated inmates shall have the opportunity to maintain an acceptable level of personal hygiene. Staff shall provide toilet tissue, wash basin, tooth brush, eyeglasses, shaving utensils, etc., as needed. Staff may issue a retrievable kit of toilet articles. Each segregated inmate shall have the opportunity to shower and shave at least three times a week, unless these procedures would present an undue security hazard. This security hazard will be documented and signed by the Warden, indicating the Warden's review and approval. Inmates in special housing will be provided, where practicable, barbering and hair care services. Exceptions to this procedure may be permitted only when found necessary by the Warden or designee.

(6) *Exercise.* Staff shall permit each segregated inmate no less than five hours exercise each week. Exercise should be provided in five one-hour periods, on five different days, but if circumstances require, one-half hour periods are acceptable if the five-hour minimum and different days schedule is maintained. These provisions must be carried out unless compelling security or safety reasons dictate otherwise. Institution staff shall document these reasons. Exercise periods, not to exceed one week, may be withheld from an inmate by order of the Warden, following a hearing, and recommendation, before a person certified in the discipline hearing officer procedures. This hearing must be held in accordance with the provisions of § 541.17, following those provisions which are appropriate to these

circumstances, and only upon a finding by the person conducting the hearing that the actions of the segregated inmate pose a threat to the safety or health conditions of the unit.

(7) *Personal Property.* Institution staff shall ordinarily impound personal property.

(8) *Reading Material.* Staff shall provide a reasonable amount of non-legal reading material, not to exceed five books per inmate at any one time, on a circulating basis. Staff shall provide the inmate opportunity to possess religious scriptures of the inmate's faith. As to legal materials, see Part 543, Subpart B.

(9) *Supervision.* In addition to the direct supervision afforded by the unit officer, a member of the medical department and one or more responsible officers designated by the Warden (ordinarily a Lieutenant) shall see each segregated inmate daily, including weekends and holidays. Members of the program staff, including unit staff, shall arrange to visit inmates in special housing within a reasonable time after receiving the inmate's request.

(10) *Correspondence and Visits.* As to correspondence privileges, see Part 540, Subpart B. Staff shall make reasonable effort to notify approved social visitors of any necessary restriction on ordinary visiting procedures so that they may be spared disappointment and unnecessary inconvenience. If ample time for corresondence exists, staff may place the burden of this notification to visitors on the inmate. As to general visiting and telephone privileges, see Part 540, Subpart D and Subpart I. In respect to legal, religious, and privileged out-going mail, the relevant regulations must be followed by institution staff (see Parts 540, 543, and 548 of this Chapter).

§ 541.22 Administrative Detention.

Administrative detention is the status of confinement of an inmate in a special housing unit in a cell either by self or with other inmates which serves to remove the inmate from the general population.

(a) *Placement in Administrative Detention.* The Warden may delegate authority to place an inmate in administrative detention to Lieutenants. Prior to the inmate's placement in administrative detention, the Lieutenant is to review the available information and determine whether the inmate's placement in administrative detention is warranted. The Warden may place an inmate in administrative detention when the inmate is in holdover status (i.e., en route to a designated institution) during transfer, or is a new commitment pending classification. The Warden may also place an inmate in administrative detention when the inmate's continued presence in the general population poses a serious threat to life, property, self, staff, other inmates or to the security or orderly running of the institution and when the inmate:

(1) Is pending a hearing for a violation of Bureau regulations;

(2) Is pending an investigation of a violation of Bureau regulations;

(3) Is pending investigation or trial for a criminal act;

(4) Is pending transfer;

(5) Requests admission to administrative detention for the inmate's own protection, or staff determines that admission to or continuation in administrative detention is necessary for the inmate's own protection (see § 541.23); or

(6) Is terminating confinement in disciplinary segregation and placement in general population is not prudent. The Segregation Review Official is to advise the inmate of this determination and the reasons for such action.

(i) In Security Level 1 through 5 and in Administrative type institutions, staff ordinarily within 90 days of an inmate's placement in post-disciplinary detention, shall, except for pre-trial inmates, either return the inmate to the general inmate population or request regional level assistance to effect a transfer to a more suitable institution.

(ii) The Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate not transferred from post-disciplinary detention within the time frame specified in paragraph (a)(6)(i) of this section.

(iii) In Security Level 6 institutions, staff will attempt to adhere to the 90-day limit for an inmate's placement in post-disciplinary detention. Because security needs required for an inmate in a Security Level 6 institution may not be available outside of post-disciplinary detention, the Warden may approve an extension of this placement upon determining in writing that it is not practicable to release the inmate to the general inmate population or to effect a transfer to a more suitable institution.

(iv) The appropriate Regional Director and the Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate in a Security Level 6 institution not transferred from post-disciplinary detention within the 90-day time frame specified in paragraph (a)(6)(iii) of this section. A similar, subsequent review shall be conducted every 60–90 days if post-disciplinary detention continues for this extended period.

(b) *Memorandum Detailing Reasons For Placement.* The Warden shall prepare a memorandum detailing the reasons for placing an inmate in administrative detention, with a copy given to the inmate, provided institutional security is not compromised thereby. Staff shall deliver this memorandum to the inmate within 24 hours of the inmate's placement in administrative detention, unless this delivery is precluded by exceptional circumstances. A memorandum is not necessary for an inmate placed in administrative detention when this placement is a direct result of the inmate's holdover status.

(c) *Review of Inmates Housed in Administrative Detention.* (1) Except as otherwise provided in paragraphs (c)(2) and (c)(3) of this section, the Segregation Review Official will review the status of inmates housed in administrative detention. The SRO shall conduct a record review within three work days of the inmate's placement in administrative detention and shall hold a hearing and formally review the status of each inmate who spends seven continuous days in administrative detention, and thereafter shall review these cases on the record (in the inmate's absence) each week, and shall hold a hearing and review these cases formally at least every 30 days. The inmate appears before the SRO at the hearing unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when administrative detention continues beyond 30 days. The assessment, submitted to the SRO in a written report, shall address the inmate's adjustment to surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals should detention continue for this extended period. Administrative detention is to be used only for short periods of time except where an inmate needs long-term protection (see § 541.23), or where there are exceptional circumstances, ordinarily tied to security or complex investigative concerns. An inmate may be kept in administrative detention for longer term protection only if the need for such protection is documented by the SRO. Provided institutional security is not

compromised, the inmate shall receive at each formal review a written copy of the SRO's decision and the basis for this finding. The SRO shall release an inmate from administrative detention when reasons for placement cease to exist.

(2) The Warden shall designate appropriate staff to meet weekly with an inmate in administrative detention when this placement is a direct result of the inmate's holdover status. Staff shall also review this type of case on the record each week.

(3) When an inmate is placed in administrative detention for protection, but not at that inmate's request, the Warden or designee is to review the inmate's status within two work days of this placement to determine if continued protective custody is necessary. A formal hearing is to be held within seven days of the inmate's placement (see § 541.23, Protection Cases).

(d) *Conditions of Administrative Detention.* The basic level of conditions as described in § 541.21(c) for disciplinary segregation also apply to administrative detention. If consistent with available resources and the security needs of the unit, the Warden shall give an inmate housed in administrative detention the same general privileges given to inmates in the general population. This includes, but is not limited to, providing an inmate with the opportunity for participation in an education program, library services, social services, counseling, religious guidance and recreation. Unless there are compelling reasons to the contrary, institutions shall provide commissary privileges and reasonable amounts of personal property. An inmate in administrative detention shall be permitted to have a radio, provided that the radio is equipped with ear plugs. Exercise periods, at a minimum, will meet the level established for disciplinary segregation and will exceed this level where resources are available. The Warden shall give an inmate in administrative detention visiting, telephone, and correspondence privileges in accordance with Part 540 of this Chapter. The Warden may restrict for reasons of security, fire safety, or housekeeping the amount of personal property that an inmate may retain while in administrative detention.

§ 541.23 Protection cases.

(a) Staff may consider the following categories of inmates as protection cases:

(1) Victims of inmate assaults;

(2) Inmate informants;

(3) Inmates who have received inmate pressure to participate in sexual activity;

(4) Inmates who seek protection through detention, claiming to be former law enforcement officers, informants, or others in sensitive law enforcement positions, whether or not there is official information to verify the claim;

(5) Inmates who have previously served as inmate gun guards, dog caretakers, or in similar positions in state or local correctional facilities;

(6) Inmates who refuse to enter the general population because of alleged pressures from other unidentified inmates;

(7) Inmates who will not provide, and as to whom staff cannot determine, the reason for refusal to return to the general population; and

(8) Inmates about whom staff has good reason to believe the inmate is in serious danger of bodily harm.

(b) Inmates who are placed in administrative detention for protection, but not at their own request or beyond the time when they feel they need to be detained for their own protection, are entitled to a hearing, no later than seven days from the time of their admission (or from the time of their detention beyond their own consent). This hearing is conducted in accordance with the procedural requirements of § 541.17, as to advance written notice, staff representation, right to make a statement and present documentary evidence, to request witnesses, to be present throughout the hearing, and advance advisement of inmate rights at the hearing, and as to making a record of the proceedings.

(c) Ordinarily, staff may place an inmate in administrative detention as provided in paragraph (a) of this rule relating to protection cases, for a period not to exceed 90 days. Staff shall clearly document in the record the reasons for any extension beyond this 90-day period.

(d) Where appropriate, staff shall first attempt to place the inmate in the general population of their particular facility. Where inappropriate, staff shall clearly document the reason(s) and refer the case, with all relevant material, to their Regional Director, who, upon review of the material, may order the transfer of a protection case.

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Part III

Environmental Protection Agency

40 CFR Part 2
Public Information; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL 3291-4]

Public Information

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This rule amends the Environmental Protection Agency's regulations implementing the Freedom of Information Act to conform to the law enforcement provisions and the fee and fee waiver provisions of the Freedom of Information Reform Act of 1986 (Pub. L. No. 99-570, sections 1801-1803).

EFFECTIVE DATE: February 4, 1988.

FOR FURTHER INFORMATION CONTACT: Marlyne Lipfert or Mary Adler, Office of General Counsel, Contracts and Information Law Branch (LE-132G), 401 M Street, SW., Washington, DC 20460, Telephone: 202/382-5460.

SUPPLEMENTARY INFORMATION: Comments were postmarked or received within the comment period from the following:

1. Auburn University.
2. Public Citizen and Freedom of Information Clearing House.
3. Reporters Committee for Freedom of the Press.
4. Hunton and Williams, counsel for Utility Air Regulatory Group.
5. National Wildlife Federation.

Comments are addressed in the analysis that follows. In addition to changes brought about by comments received, several minor changes have been made pursuant to internal agency review.

Section 2.100 Definitions: (b) "EPA Record"

One commenter objected to the amendment of the definition of "EPA Record" which provides that a record must be in EPA's "possession or control" in order to be considered an "EPA Record." The commenter disagreed that case law warrants changing the existing language which provides that a record that "is, was, or is alleged to be possessed by EPA" is an EPA record. The existing language inaccurately implies that records that are no longer in EPA's possession, or perhaps never were but are merely alleged to be in EPA's possession, are nonetheless EPA records. In order to correct this inaccuracy, a change to this definition is necessary.

This commentor also suggested that "records that are generated at agency expense, or that are used for any form in the conduct of agency business, without regard to ownership, are agency records" and that EPA's final rules should so acknowledge. Because the precise language used in case law to describe "agency records" varies depending on the type of record referred to, EPA has used the terms "possession or control" to characterize the general approach taken by the courts. See *Kissinger v. Reporter's Committee for Freedom of the Press*, 445 U.S. 139 (1980). See also *Forsham v. Harris*, 445 U.S. 169 (1980); *Wolfe v. HHS*, 771 F.2d 1077 (D.C. Cir. 1983); *Goland v. CIA*, 607 F.2d 339 (D.C. Cir. 1978).

The commentor objected further to the language that exempts "materials which are legally owned by an EPA officer or employee in his or her purely personal capacity" from being "agency records". See *Bureau of National Affairs, Inc.* v. *United States Department of Justice*, 742 F.2d 1484 (D.C. Cir. 1984).

Section 2.100(e) " 'Commercial Use' Request," "Educational Institution" and "Representatives of the News Media"

Two commenters objected to the definitions of "commercial use request" and "educational institution"; three objected to "representatives of the news media".

These definitions, which categorize requesters for the purpose of establishing fees to be charged, were taken directly from the OMB Fee Guidance which was published subject to notice and comment. See OMB Guidelines, 52 FR 10012 (March 27, 1987). EPA not only believes that the Freedom of Information Reform Act of 1986 mandates that EPA adopt the guidance established by OMB, but also that OMB's definitions correctly implement the statutory terms as set forth in the Act.

Section 2.100(j) "Review"

A parenthetical note was added to this definition to explain that review of documents must be done for all responses to FOIA requests, but that review time may only be charged to commercial use requesters.

Section 2.113(d)(2) Circumstances Under Which an Initial Determination Shall Not Reveal the Existence or Non-existence of Records

Four commentors expressed concern over the language contained in the revision to this section. Some believed this to be the implementation of the provision of subsection (c) of the Act.

This section was amended only to clarify the language in the existing regulation relating to so-called "glomar" responses, first articulated in *Phillippi* v. *CIA*, 546 F.2d 1009, and not to implement any provisions in the Reform Act. Apparently, this attempt to clarify was not successful. Accordingly, EPA will retain the existing language, with two exceptions: (1) "Confidential investigation" will no longer be included in this section and (2) "classified national security information" will be added. The Agency does not believe that "glomar" responses are appropriate for records exempt under exemption (7)(A) "confidential investigation" (5 U.S.C. 552(b)(7)(A)). Under limited circumstances, a "glomar" response is appropriate in cases involving "classified national security information", withholdable under exemption 1 (5 U.S.C. 552(b)(1)).

Section 2.116 Contents of Determination Denying Appeal

This section was changed only to conform to the change in § 2.113(d)(2). Likewise, EPA will retain the existing language of this section with the above-noted exceptions, making this section consistent with § 2.113(d)(2).

Section 2.120 Fees, Payment, Waiver

Some of the subsections of this section have been renumbered for organizational purposes. All substantive changes are noted below.

Section 2.120(a)(1)(i) and (iv) (previously § 2.120(a)(4)) Charges for Search and Review When No Records are Located or Released

One commentor objected to the provision by which the Agency may assess search and review charges even though no records are found or the records are determined to be exempt from disclosure. This provision is adopted from the OMB Guidelines, with which the Agency is bound to comply. Since the Agency will incur the cost of search and review regardless of whether records are found and/or released, it is appropriate that a requestor who has not requested or has not been granted a fee waiver be held liable for such cost rather than the Agency and, ultimately, the taxpayer. The final rule differs from the proposal, but only to clarify that only two categories of requests may be subject to these charges: "Commercial use requests", with regard to both search and review costs; and the "all other requests" category, with regard to search costs (but not cost of review time).

Section 2.120(a)(5)(iv) No Charges for the First Two Hours of Search Time

One commentor raised a question concerning calculations of the cost of computer search time in regard to the waiver of the first two hours of search time. In response to this query, the Agency has added the language "or its cost equivalent" to this section, indicating that when a computer search is undertaken, the two hours not chargeable will be calculated as the dollar equivalent of a two hour manual search, in keeping with the OMB Guidelines on this point. See OMB Fee Guideline section 7.f, 52 FR 10012, 10019 (March 27, 1987). The statute makes no distinction concerning computer search time and the "two free hours." Because few computer searches would reach two hours and because the cost of computer search time is far greater per unit of time than the cost of manual search, it is unreasonable to conclude that Congress intended the "two free hours" to extend literally to computer search time. It is far more reasonable to extend the two hour cost equivalent of a manual search.

Section 2.120(c)(1) Assurance of Payment of Fees

One commentor expressed concern that to require a requestor to agree to pay all fees (over $25.00) before the time deadline begins to run is not in accordance with law. This subsection was changed to eliminate reference to "prepayment", in accordance with the amended statute. This subsection was not otherwise substantively changed, rather its language was simplified. The time-tolling section, (§ 2.112(d)) to which this subsection previously cross referenced, has not been changed. The time-tolling FOIA fee provisions, which are based upon sound principles of responsible cost recovery and are aimed at providing the government with some assurance of reimbursement before it expends the cost and effort to process a request, have been upheld by the courts. See e.g., *Frons* v. *FBI*, 571 F. Supp. 1241, 1243, D. Mass. 1983). Reference to § 2.112(d) was inadvertently omitted and will again be included for clarity.

Section 2.120(c)(2) Advance Payment of Fees

One commentor objected to the language "i.e., payment before work is commenced or continued" contained in this section. This language is taken directly from the OMB Guidelines and is intended to define "advance payment", not to imply that payment will be required before records are actually released. Although the Agency does not believe it is proscribed from requiring payment prior to release of records, it is not the Agency's general policy to require payment prior to the release of records.

Section 2.120(d) Fee Waivers or Reductions

Three commentors objected to EPA's incorporation of the Fee Waiver Guidelines issued by the Department of Justice. Although not adopted verbatim, EPA has incorporated the criteria set out in the DOJ guidelines. After careful consideration of commentors' objections to the fee waiver guidelines, the Agency has determined to keep the guidelines as set out in the proposed rule. The factors set forth in the guidelines address each word of the statutory standard, and merely give guidance in the application of the statutory standard.

In response to the concerns expressed by some commentors, EPA believes that requestors seeking a fee waiver will qualify if they provide adequate information to satisfy each of the fee waiver factors. Each request will be determined on a case-by-case basis since the statute provides no basis for any fee waiver "presumptions".

One commentor claimed that the requirement of submitting supporting information with a request for a fee waiver is subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. Contrary to that claim, the Office of Information and Regulatory Affairs of the Office of Management and Budget, which holds responsibility for the Paperwork Reduction Act's implementation, has determined that such a requirement is not an "information collection request" within the meaning of that Act.

One commentor suggested the Agency simply restate the statutory language regarding waiver of fees. To do so would not satisfy the statutory requirement which directs that the Agency "promulgate regulations . . . establishing procedures and guidelines for determining when such fees should be waived or reduced."

Section 2.120(d)(6) Appeal of Fee Waiver Requests

This section has been amended to reflect a revised delegation signed by the Administrator, delegating the authority to decide fee waiver appeals to the General Counsel. This authority had previously been delegated to the Assistant Administrator for External Affairs.

Executive Order 12291

Under Executive Order 12291, EPA must submit a Regulatory Impact Analysis for all "major" rules. EPA has determined that this regulation is not a major rule for purposes of Executive Order 12291 because it will not have a $100 million annual effect on the economy, will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, and will not have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in the domestic or export markets. Therefore, a Regulatory Impact Analysis is not required. EPA has based all administrative decisions on this rule on adequate information concerning the need for and consequences of the rule.

Paperwork Reduction Act

This rule does not come under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., because it makes no independent request or requirement to collect information.

Regulatory Flexibility Act

This regulation will not have significant economic impact on a substantial number of small entities. These changes to EPA's regulations will not impose significant additional costs on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., is not required.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Freedom of information, Public information.

Dated: December 24, 1987.

Lee M. Thomas,

Administrator.

Therefore, EPA amends 40 CFR Part 2 as follows:

PART 2—[AMENDED]

1. The authority citation for Part 2 is revised to read as follows:

Authority: 5 U.S.C. 301, 552 (as amended), 553; secs. 114, 206, 208, 301, and 307, Clean Air Act, as amended (42 U.S.C. 7414, 7525, 7542, 7601, 7607); secs. 308, 501 and 509(a), Clean Water Act, as amended (33 U.S.C. 1318, 1361, 1369(a)); sec. 13, Noise Control Act of 1972 (42 U.S.C. 4912); secs. 1445 and 1450, Safe Drinking Water Act (42 U.S.C. 300j–4, 300j–9); secs. 2002, 3007, and 9005, Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6927, 6995); secs. 8(c), 11, and 14, Toxic Substances Control Act (15 U.S.C. 2607(c), 2610, 2613); secs. 10, 12, and 25, Federal Insecticide, Fungicide and Rodenticide Act,

as amended (7 U.S.C. 136h, 136j, 136w); sec. 408(f), Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 346(f)); secs. 104(f) and 108, Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1414(f), 1418); sec. 104, Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604); sec. 505, Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2005).

2. Section 2.100 is amended by revising paragraph (b) and by adding paragraphs (e) through (k) to read as follows:

§ 2.100 Definitions.

* * * * *

(b) "EPA Record" or, simply "record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved, from which the information can be retrieved and copied, and over which EPA has possession or control. It may include copies of the records of other Federal agencies (see § 2.111(d)). The term includes informal writings (such as drafts and the like), and also includes information preserved in a form which must be translated or deciphered by machine in order to be intelligible to humans. The term includes documents and the like which were created or acquired by EPA, its predecessors, its officers, and its employees by use of Government funds or in the course of transacting official business. However, the term does not include materials which are the personal records of an EPA officer or employee. Nor does the term include materials published by non-Federal organizations which are readily available to the public, such as books, journals, and periodicals available through reference libraries, even if such materials are in EPA's possession.

* * * * *

(e) The term " 'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requestor or the person on whose behalf the request is made. In determining whether a requestor properly belongs in this category, EPA must determine the use to which a requestor will put the documents requested. Moreover, where EPA has reasonable cause to doubt the use to which a requestor will put the records sought, or where that use is not clear from the request itself, EPA may seek additional clarification before assigning the request to a specific category.

(f) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (e) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(g) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution or professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(h) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but EPA may also look to the past publication record of a requestor in making this determination.

(i) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searching for material must be done in the most efficient and least expensive manner so as to minimize costs for both the EPA and the requestor. For example, EPA will not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" will be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (j) of this section). Searches may be done manually or by computer using existing programming.

(j) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (e) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving legal or policy issues regarding the application of exemptions. (Documents must be reviewed in responding to all requests; however, review time may only be charged to Commercial Use Requesters.)

(k) The term "duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

3. Section 2.101 is amended by adding paragraph (d) to read as follows:

§ 2.101 Policy on disclosure of EPA records.

* * * * *

(d) When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, EPA will inform the requester of the steps necessary to obtain records from the sources.

4. Section 2.113 is amended by revising paragraphs (d), (e) and (f) to read as follows:

§ 2.113 Initial denials of requests.

* * * * *

(d)(1) Each initial determination to deny a request shall be written, signed, and dated, and, except as provided in paragraph (d)(2), shall contain a reference to the Request Identification Number, shall identify the records that are being withheld (individually, or, if the denial covers a large number of similar records, by described category), and shall state the basis for denial for each record or category of records being withheld.

(2) No initial determination shall reveal the existence or nonexistence of records if identifying the mere fact of the existence or nonexistence of those records would reveal confidential

business information, confidential personal information or classified national security information. Instead of identifying the existence or nonexistence of the records, the initial determination shall state that the request is denied because either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of 5 U.S.C. 552(b). No such determination shall be made without the concurrence of the General Counsel or his designee. The General Counsel has designated the Contracts and Information Law Branch to act on these requests for concurrence. See § 2.121 for guidance on initial determinations denying, in limited circumstances, the existence of certain law enforcement records or information.

(e) If the decision to deny a request is made by an authorized EPA employee other than the person signing the determination letter, that other person's identity and position shall be stated in the determination letter.

(f) Each initial determination which denies, in whole or in part, a request for one or more existing, located EPA records (including determinations described in § 2.113(d)(2) of this section) shall state that the requester may appeal the initial denial by sending a written appeal to the address shown in § 2.106(a) within 30 days after receipt of the determination. An initial determination which only denies the existence of records, however, will not include a notice of appeal rights.

* * * * *

5. Section 2.116 is revised to read as follows:

§ 2.116 Contents of determination denying appeal.

(a) Except as provided in paragraph (b) of this section, each determination denying an appeal from an initial denial shall be in writing, shall state which of the exemptions in 5 U.S.C. 552(b) apply to each requested existing record, and shall state the reason(s) for denial of the appeal. A denial determination shall also state the name and position of each EPA officer or employee who directed that the appeal be denied. Such a determination shall further state that the person whose request was denied may obtain de novo judicial review of the denial by complaint filed with the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the Agency records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4).

(b) No determination denying an appeal shall reveal the existence or nonexistence of records if identifying the mere fact of the existence or nonexistence of those records would reveal confidential business information, confidential personal information or classified national security information. Instead of identifying the existence or nonexistence of the records, the determination shall state that the appeal is denied because either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of 5 U.S.C. 552(b).

6. Section 2.118 is amended by revising paragraph (a)(7) to read as follows:

§ 2.118 Exemption categories.

(a) * * *

(7)(i) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) Could reasonably be expected to interfere with enforcement proceedings;

(B) Would deprive a person of a right to a fair trial or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(F) Could reasonably be expected to endanger the life or physical safety of any individual.

(ii) [Reserved]

* * * * *

7. Section 2.120 is revised to read as follows:

§ 2.120 Fees; payment; waiver.

(a) *Fee schedule.* Requesters shall be charged the full allowable direct costs incurred by the Agency in responding to a FOIA request. However, if EPA uses a contractor to search for, reproduce or disseminate records responsive to a request, the cost to the requester shall not exceed the cost of the Agency itself performing the service.

(1) There are four categories of requests. Fees for each of the categories will be charged as follows:

(i) Commercial use requests. If the request seeks disclosure of records for a commercial use, the requester shall be charged for the time spent searching for the requested record, reviewing the record to determine whether it should be disclosed and for the cost of each page of duplication. Commercial use requesters should note that EPA also may charge fees to them for time spent searching for and/or reviewing records, even if EPA fails to locate the records or if the records located are determined to be exempt from disclosure.

(ii) Requests from an educational or non-commercial scientific institution whose purpose is scholarly or scientific research, involving a request which is not for a commercial use and seeks disclosure of records. In the case of such a request, the requester shall be charged only for the duplication cost of the records, except that the first 100 pages of duplication shall be furnished without charge.

(iii) Requests from a representative of the news media, involving a request which is not for a commercial use and seeks disclosure of records. In the case of such a request, the requester shall be charged only for the duplication cost of the records, except that the first 100 pages of duplication shall be furnished without charge.

(iv) All other requests. If the request seeks disclosure of records other than as described in paragraphs (a)(1) (i), (ii), and (iii) of this section, the requester shall be charged the full cost of search and duplication. However, the first two hours of search time (or its cost equivalent) and the first 100 pages of duplication (or their cost equivalent) shall be furnished without charge. Requestors in the "all other requests" category should note that EPA also may charge fees to them for time spent searching for records, even if EPA fails to locate the records or if the records located are determined to be exempt from disclosure.

(2) The determination of a requester's fee category will be based on the following:

(i) Commercial use requesters: The use to which the requester will put the documents requested;

(ii) Educational and non-commercial scientific institution requesters: Identity of the requester and the use to which the requester will put the documents requested;

(iii) Representatives of the news media requesters: The identity of the requester and the use to which the

requester will put the documents requested.

(3) Fees will be charged to requesters, as appropriate, for search, duplication and review of requested records in accordance with the following schedule:

(i) Manual search for records.

(A) EPA Employees: For each ½ hour or portion thereof:

(*1*) GS–8 and below: $4.00.

(*2*) GS–9 and above: $10.00.

(B) Contractor employees: The requester will be charged for actual charges up to but not exceeding the rate which would have been charged had EPA employees conducted the search.

(ii) Computer search for records charges will consist of:

(A) EPA employee operators: For each ½ hour or portion thereof:

(*1*) GS–8 and below: $4.00.

(*2*) GS–9 and above: $10.00, plus.

(B) Contractor operators: Requestors will be charged for the actual charges up to but not exceeding the rate which would have been charged had EPA employees conducted the search (see paragraph (a)(3)(i)(A) of this section), plus.

(C) Actual computer resource usage charges for this search.

(iii) Review of records. For each ½ hour or portion thereof (EPA employees):

(A) GS–8 and below: $4.00.

(B) GS–9 and above: $10.00.

(iv) Duplication or reproduction of records.

(A) Duplication or reproduction of documents by EPA employees (paper copy of paper original): $.15 per page.

(B) Computer printouts (other than those calculated in a direct-cost billing—see paragraph (a)(3)(ii) of this section "Computer search for records") $.15 per page.

(C) Other methods of duplication or reproduction, including, but not limited to, duplication of photographs, microfilm and magnetic tape, will be charged at the actual direct cost to EPA.

(4) Other charges.

(i) Other charges incurred in responding to a request including but not limited to, special handling or transportation of records, will be charged at the actual direct cost to EPA.

(ii) Certification or authentication of records: $25.00 per certification or authentication.

(5) No charge shall be made—

(i) For the cost of preparing or reviewing letters of response to a request or appeal;

(ii) For time spent resolving legal or policy issues concerning the application of exemptions;

(iii) For search time and the first 100 pages of duplication for requests described in § 2.120(a)(1) (ii) and (iii) of this section;

(iv) For the first two hours of search time (or its cost equivalent) and for the first 100 pages of duplication for requests described in § 2.120(a)(1)(iv) of this section;

(v) If the total fee in connection with a request is less than $25.00, or if the costs of collecting the fee would otherwise exceed the amount of the fee. However, when EPA reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, EPA will aggregate such requests to determine the total fee, and will charge accordingly;

(vi) For responding to a request by an individual for one copy of a record retrievable by the requesting individual's name or personal identifier from a Privacy Act system of records;

(vii) For furnishing records requested by either House of Congress, or by a duly authorized committee or subcommittee of Congress, unless the records are requested for the benefit of an individual Member of Congress or for a constituent;

(viii) For furnishing records requested by and for the official use of other Federal agencies; or

(ix) For furnishing records needed by an EPA contractor, subcontractor, or grantee to perform the work required by the EPA contract or grant.

(b) *Method of payment.* All fee payments shall be in the form of a check or money order payable to the "U.S. Environmental Protection Agency" and shall be sent (accompanied by a reference to the pertinent Request Identification Number(s)) to the appropriate Headquarters or Regional Office lock box address:

(1) EPA—Washington Headquarters, P.O. Box 360277M, Pittsburgh, PA 15251;
(2) EPA—Region 1, P.O. Box 360197M, Pittsburgh, PA 15251;
(3) EPA—Region 2, P.O. Box 360188M, Pittsburgh, PA 15251;
(4) EPA—Region 3, P.O. Box 360515M, Pittsburgh, PA 15251;
(5) EPA—Region 4, P.O. Box 100142, Atlanta, GA. 30384;
(6) EPA—Region 5, P.O. Box 70753, Chicago, IL 60673;
(7) EPA—Region 6, P.O. Box 360582M, Pittsburgh, PA 15251;
(8) EPA—Region 7, P.O. Box 360748M, Pittsburgh, PA 15251;
(9) EPA—Region 8, P.O. Box 360859M, Pittsburgh, PA 15251;
(10) EPA—Region 9, P.O. Box 360863M, Pittsburgh, PA 15251;
(11) EPA—Region 10, P.O. Box 360903M, Pittsburgh, PA 15251;

Under the Debt Collection Act of 1982 (Pub. L. 97–365), payment (except for prepayment) shall be due within thirty (30) calendar days after the date of billing. If payment is not received at the end of thirty calendar days, interest and a late payment handling charge will be assessed. In addition, under this Act, a penalty charge will be applied on any principal amount not paid within ninety (90) calendar days after the due date for payment. By the authority of the Debt Collection Act of 1982, delinquent amounts due may be collected through administrative offset or referred to private collection agencies. Information related to delinquent accounts may also be reported to the appropriate credit agencies.

(c) *Assurance of payment.* (1) If an EPA office estimates that the fees for processing a request (or aggregated requests as described in § 2.120(a)(5)(vi) of this section) will exceed $25.00, that office need not search for, duplicate or disclose records in response to the request(s) until the requester assures payment of the total amount of fees estimated to become due under this section. In such cases, the EPA office will promptly inform the requester (by telephone it practicable) of the need to make assurance of payment.

(2) An EPA office may not require a requester to make an advance payment, i.e. payment before work is commenced or continued on a request, unless:

(i) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days after the date of the billing), or

(ii) The EPA office estimates or determines that the allowable charges that a requester may be required to pay are likely to exceed $250.00. Then the EPA office will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment. If such advance payment is not received within 30 days after EPA's billing, the request will not be processed and the request will be closed. See also §2.112(d).

(d) *Reduction or waiver of fee.* (1) The fee chargeable under this section shall be reduced or waived by EPA if the Agency determines that disclosure of the information:

(i) Is in the public interest because it is likely to contribute significantly to

public understanding of the operations or activities of the government; and

(ii) Is not primarily in the commercial interest of the requester.

(2) Both of these requirements must be satisfied before fees properly assessable can be waived or reduced.

(3) The Agency will employ the following four factors in determining whether the first requirement has been met:

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

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

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

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

(4) The Agency will employ the following factors in determining whether the second requirement has been met:

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

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

(5) In all cases, the burden shall be on the requester to present information in support of a request for a waiver of fees. A request for reduction or waiver of fees should include:

(i) A clear statement of the requester's interest in the requested documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from such use and from the release of the requested documents; and

(iv) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(6) A request for reduction or waiver of fees shall be addressed to the appropriate Freedom of Information Officer. The requester shall be informed in writing of the Agency's decision whether to grant or deny the fee waiver or fee reduction request. This decision may be appealed by letter addressed to the EPA Freedom of Information Officer. The General Counsel shall decide such appeals. The General Counsel may redelegate this authority only to the Deputy General Counsel or the Associate General Counsel for Grants, Contracts and General Law.

(e) The Financial Management Office shall maintain a record of all fees charged requesters for searching for, reviewing and reproducing requested records under this section. If after the end of 60 calendar days from the date on which request for payment was made the requester has not submitted payment to the appropriate EPA billing address (as listed in § 2.120(b)), the Financial Management Division shall place the requester's name on a delinquent list which is sent to the EPA Freedom of Information Officer. If a requester whose name appears on the delinquent list makes a request under this part, the EPA Freedom of Information Officer shall inform the requester that EPA will not process the request until the requester submits payment of the overdue fee from the earlier request. Any request made by an individual who specifies an affiliation with or representation of a corporation, association, law firm, or other organization shall be deemed to be a request by the corporation, association, law firm, or other organization. If an organization placed on the delinquent list can show that the person who made the request for which payment was overdue did not make the request on behalf of the organization the organization will be removed from the delinquent list but the name of the individual shall remain on the list. A requester shall not be placed on the delinquent list if a request for a reduction or for a waiver is pending under paragraph (d) of this section.

8. Section 2.121 is added to read as follows:

§ 2.121 Exclusions.

(a) Whenever a request is made which involves access to records described in § 2.118(a)(7)(i)(A), and

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of such records could reasonably be expected to interfere with enforcement proceedings, EPA shall, during only such time as the circumstances continue, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

(b) Whenever informant records maintained by the Agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier and the informant's status as an informant has not been officially confirmed, EPA shall treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

(c) No determination relying on this section shall be issued without the concurrence of the General Counsel or his designee. The General Counsel has designated the Contracts and Information Law Branch to act on these requests for concurrence.

(d) An initial determination which only relies on this section will not include notice of appeal rights.

[FR Doc. 88-29 Filed 1-4-88; 8:45 am]

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federal register

Tuesday
January 5, 1988

Part IV

The President

Executive Order 12622—Adjustments of Certain Rates of Pay and Allowances

Federal Register
Vol. 53, No. 2
Tuesday, January 5, 1988

Presidential Documents

Title 3—

The President

Executive Order 12622 of December 31, 1987

Adjustments of Certain Rates of Pay and Allowances

By the authority vested in me as President by the Constitution and laws of the United States of America, including sections 108 and 110 of Public Law 100–202, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay and salaries of the following statutory pay systems are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Department of Medicine and Surgery, Veterans Administration (38 U.S.C. 4107) at Schedule 3.

Sec. 2. *Senior Executive Service.* Pursuant to the provisions of section 5382 of title 5, United States Code, the rates of basic pay for members of the Senior Executive Service are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Executive Salaries.* The rates of pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5316) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and Congressional Salaries (2 U.S.C. 31) at Schedule 6; and

(c) Salaries for justices and judges (28 U.S.C. 5, 44(d), 135, 252) and for other judicial officers (28 U.S.C. 153(a), 172(b)) at Schedule 7.

Sec. 4. *Uniformed Services.* Pursuant to section 601 of Public Law 100–180, as amended by section 110(b) of Public Law 100–202, the rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), and the rates of basic allowances for quarters (37 U.S.C. 403(a)) for members of the uniformed services are set forth at Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Effective Dates.* The rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services provided for herein are effective on January 1, 1988. All other schedules provided for herein are effective on the first day of the first applicable pay period beginning on or after January 1, 1988.

Sec. 6. Executive Order No. 12578 of December 31, 1986, is superseded.

Ronald Reagan

THE WHITE HOUSE,
December 31, 1987.

Billing code 3195-01-M

SCHEDULE 1--GENERAL SCHEDULE

	1	2	3	4	5	6	7	8	9	10
GS-1	$9,811	$10,139	$10,465	$10,791	$11,117	$11,309	$11,631	$11,955	$11,970	$12,275
2	11,032	11,294	11,659	11,970	12,103	12,459	12,815	13,171	13,527	13,883
3	12,038	12,439	12,840	13,241	13,642	14,043	14,444	14,845	15,246	15,647
4	13,513	13,963	14,413	14,863	15,313	15,763	16,213	16,663	17,113	17,563
5	15,118	15,622	16,126	16,630	17,134	17,638	18,142	18,646	19,150	19,654
6	16,851	17,413	17,975	18,537	19,099	19,661	20,223	20,785	21,347	21,909
7	18,726	19,350	19,974	20,598	21,222	21,846	22,470	23,094	23,718	24,342
8	20,739	21,430	22,121	22,812	23,503	24,194	24,885	25,576	26,267	26,958
9	22,907	23,671	24,435	25,199	25,963	26,727	27,491	28,255	29,019	29,783
10	25,226	26,067	26,908	27,749	28,590	29,431	30,272	31,113	31,954	32,795
11	27,716	28,640	29,564	30,488	31,412	32,336	33,260	34,184	35,108	36,032
12	33,218	34,325	35,432	36,539	37,646	38,753	39,860	40,967	42,074	43,181
13	39,501	40,818	42,135	43,452	44,769	46,086	47,403	48,720	50,037	51,354
14	46,679	48,235	49,791	51,347	52,903	54,459	56,015	57,571	59,127	60,683
15	54,907	56,737	58,567	60,397	62,227	64,057	65,887	67,717	69,547	71,377
16	64,397	66,544	68,691	70,838	72,500	73,660*	75,765*	77,870*	79,975*	
17	73,958*	76,423*	78,888*	81,353*	83,818*					
18	86,682*									

* The rate of basic pay payable to employees at these rates is limited to the rate for level V of the Executive Schedule, which is $72,500.

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$54,907	$44,491	$36,051	$29,213	$23,671	$21,161	$18,917	$16,911	$15,118
2	56,554	45,826	37,133	30,089	24,381	21,796	19,485	17,418	15,572
3	58,251	47,201	38,247	30,992	25,113	22,450	20,069	17,941	16,039
4	59,998	48,617	39,394	31,922	25,866	23,123	20,671	18,479	16,520
5	61,798	50,075	40,576	32,879	26,642	23,817	21,291	19,033	17,015
6	63,652	51,577	41,793	33,866	27,441	24,531	21,930	19,604	17,526
7	65,562	53,125	43,047	34,882	28,264	25,267	22,588	20,193	18,052
8	67,529	54,718	44,338	35,928	29,112	26,025	23,266	20,798	18,593
9	69,555	56,360	45,668	37,006	29,986	26,806	23,963	21,422	19,151
10	71,377	58,051	47,038	38,116	30,885	27,610	24,682	22,065	19,726
11	71,377	59,792	48,450	39,260	31,812	28,439	25,423	22,727	20,317
12	71,377	61,586	49,903	40,438	32,766	29,292	26,186	23,409	20,927
13	71,377	63,434	51,400	41,651	33,749	30,171	26,971	24,111	21,555
14	71,377	65,337	52,942	42,900	34,762	31,076	27,780	24,834	22,201

SCHEDULE 3—DEPARTMENT OF MEDICINE AND SURGERY SCHEDULES
VETERANS ADMINISTRATION

Section 4103 Schedule

Chief Medical Director	$97,206***
Deputy Chief Medical Director	93,248**
Associate Deputy Chief Medical Director	89,314*
Assistant Chief Medical Director	86,682*

	Minimum	Maximum
Medical Director	$73,958*	$83,818*
Director of Nursing Service	73,958*	83,818*
Director of Podiatric Service	64,397	79,975*
Director of Chaplain Service	64,397	79,975*
Director of Pharmacy Service	64,397	79,975*
Director of Dietetic Service	64,397	79,975*
Director of Optometric Service	64,397	79,975*

Physician and Dentist Schedule

Director Grade	$64,397	$79,975*
Executive Grade	59,462	75,784*
Chief Grade	54,907	71,377
Senior Grade	46,679	60,683
Intermediate Grade	39,501	51,354
Full Grade	33,218	43,181
Associate Grade	27,716	36,032

Clinical Podiatrist and Optometrist Schedule

Chief Grade	$54,907	$71,377
Senior Grade	46,679	60,683
Intermediate Grade	39,501	51,354
Full Grade	33,218	43,181
Associate Grade	27,716	36,032

Nurse Schedule

Director Grade	$54,907	$71,377
Assistant Director Grade	46,679	60,683
Chief Grade	39,501	51,354
Senior Grade	33,218	43,181
Intermediate Grade	27,716	36,032
Full Grade	22,907	29,783
Associate Grade	19,713	25,626
Junior Grade	16,851	21,909

*** The rate of basic pay is limited to the rate for level III of the Executive Schedule, which is $82,500.

** The rate of basic pay is limited to the rate for level IV of the Executive Schedule, which is $77,500.

* The rate of basic pay is limited to the rate for level V of the Executive Schedule, which is $72,500.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

ES-1	$65,994
ES-2	68,952
ES-3	71,910
ES-4	73,400
ES-5	75,500
ES-6	77,500

SCHEDULE 5--EXECUTIVE SCHEDULE

level I	$99,500
level II	89,500
level III	82,500
level IV	77,500
level V	72,500

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

Vice President	$115,000
Senators	89,500
Members of the House of Representatives	89,500
Delegates to the House of Representatives	89,500
Resident Commissioner from Puerto Rico	89,500
President pro tempore of the Senate	99,500
Majority leader and minority leader of the Senate	99,500
Majority leader and minority leader of the House of Representatives	99,500
Speaker of the House of Representatives	115,000

SCHEDULE 7--JUDICIAL SALARIES

Chief Justice of the United States	$115,000
Associate Justices of the Supreme Court	110,000
Circuit Judges	95,000
District Judges	89,500
Judges of the Court of International Trade	89,500
Judges of the United States Claims Court	82,500
Bankruptcy Judges	72,500

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

PART I--MONTHLY BASIC PAY TABLE

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
COMMISSIONED OFFICERS														
O-10**	$5485.80	$5679.00	$5679.00	$5679.00	$5679.00	$5896.50	$5896.50	$6223.50*	$6223.50*	$6668.70*	$6668.70*	$7115.10*	$7115.10*	$7558.50*
O-9	4862.10	4989.30	5095.50	5095.50	5095.50	5225.10	5225.10	5442.60	5442.60	5896.50	5896.50	6223.50*	6223.50*	6668.70*
O-8	4403.70	4535.40	4643.10	4643.10	4643.10	4989.30	4989.30	5225.10	5225.10	5442.60	5679.00	5896.50	6041.70	6041.70
O-7	3659.10	3907.80	3907.80	3907.80	4083.00	4083.00	4319.70	4319.70	4535.40	4989.30	5332.50	5332.50	5332.50	5332.50
O-6	2712.00	2979.90	3174.90	3174.90	3174.90	3174.90	3174.90	3174.90	3282.60	3801.60	3996.00	4083.00	4319.70	4685.10
O-5	2169.00	2547.00	2723.10	2723.10	2723.10	2723.10	2805.60	2956.20	3154.50	3390.60	3585.00	3693.60	3822.60	3822.60
O-4	1828.50	2226.60	2374.80	2374.80	2418.90	2525.70	2697.90	2849.70	2979.90	3110.40	3196.50	3196.50	3196.50	3196.50
O-3***	1699.20	1899.60	2030.70	2247.00	2354.40	2439.00	2571.00	2697.90	2764.50	2764.50	2764.50	2764.50	2764.50	2764.50
O-2***	1481.70	1618.20	1943.70	2009.10	2051.40	2051.40	2051.40	2051.40	2051.40	2051.40	2051.40	2051.40	2051.40	2051.40
O-1***	1286.10	1339.20	1618.20	1618.20	1618.20	1618.20	1618.20	1618.20	1618.20	1618.20	1618.20	1618.20	1618.20	1618.20
COMMISSIONED OFFICERS WITH OVER 4 YEARS' ACTIVE DUTY AS AN ENLISTED MEMBER OR WARRANT OFFICER														
O-3	----	----	----	$2247.00	$2354.40	$2439.00	$2571.00	$2697.90	$2805.60	$2805.60	$2805.60	$2805.60	$2805.60	$2805.60
O-2	----	----	----	2009.10	2051.40	2116.20	2226.60	2311.50	2374.80	2374.80	2374.80	2374.80	2374.80	2374.80
O-1	----	----	----	1618.20	1728.60	1792.20	1857.00	1921.80	2009.10	2009.10	2009.10	2009.10	2009.10	2009.10

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* Basic pay is limited to the rate of basic pay for level V of the Executive Schedule, which is $6,041.70 per month.

** While serving as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is $8,340.00*, regardless of cumulative years of service computed under section 205 of title 37, United States Code.

*** Does not apply to commissioned officers who have been credited with over 4 years' active service as an enlisted member or warrant officer.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 2)

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

PAY GRADE	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18	Over 20	Over 22	Over 26
WARRANT OFFICERS														
W-4	$1731.00	$1857.00	$1857.00	$1899.60	$1986.00	$2073.60	$2160.60	$2311.50	$2418.90	$2503.80	$2571.00	$2653.80	$2742.60	$2956.20
W-3	1573.20	1706.70	1706.70	1728.60	1748.70	1876.80	1986.00	2051.40	2116.20	2179.20	2247.00	2334.30	2418.90	2503.80
W-2	1377.90	1490.70	1490.70	1534.20	1618.20	1706.70	1771.50	1836.30	1899.60	1966.20	2030.70	2094.90	2179.20	2179.20
W-1	1148.10	1316.40	1316.40	1426.20	1490.70	1554.90	1618.20	1685.10	1748.70	1813.80	1876.80	1943.70	1943.70	1943.70
ENLISTED MEMBERS														
E-9*	----	----	----	----	----	----	$2013.60	$2059.20	$2105.70	$2154.00	$2202.00	$2244.90	$2362.80	$2592.60
E-8	----	----	----	----	----	$1688.70	1737.00	1782.60	1829.10	1877.10	1920.60	1967.70	2083.20	2315.40
E-7	$1179.00	$1272.60	$1320.00	$1365.90	$1412.70	1457.70	1504.20	1551.00	1621.20	1667.40	1713.90	1736.10	1852.80	2083.20
E-6	1014.30	1105.50	1151.70	1200.60	1245.30	1290.60	1338.00	1407.00	1451.10	1497.90	1520.70	1520.70	1520.70	1520.70
E-5	890.10	969.00	1015.80	1060.20	1129.80	1175.70	1222.50	1267.50	1290.60	1290.60	1290.60	1290.60	1290.60	1290.60
E-4	830.40	876.60	928.20	1000.20	1039.80	1039.80	1039.80	1039.80	1039.80	1039.80	1039.80	1039.80	1039.80	1039.80
E-3	782.10	825.00	858.30	892.20	892.20	892.20	892.20	892.20	892.20	892.20	892.20	892.20	892.20	892.20
E-2	752.70	752.70	752.70	752.70	752.70	752.70	752.70	752.70	752.70	752.70	752.70	752.70	752.70	752.70
E-1**	671.40	671.40	671.40	671.40	671.40	671.40	671.40	671.40	671.40	671.40	671.40	671.40	671.40	671.40
E-1***	620.70	620.70	620.70	620.70	620.70	620.70	620.70	620.70	620.70	620.70	620.70	620.70	620.70	620.70

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* While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $3,151.20 regardless of cumulative years of service computed under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 3)

Part II--BASIC ALLOWANCE FOR QUARTERS RATES

PAY GRADE	Without dependents		With dependents
	Full rate*	Partial rate**	
COMMISSIONED OFFICERS			
O-10	$581.40	$50.70	$715.20
O-9	581.40	50.70	715.20
O-8	581.40	50.70	715.20
O-7	581.40	50.70	715.20
O-6	533.70	39.60	648.60
O-5	503.70	33.00	597.60
O-4	461.70	26.70	546.30
O-3	373.80	22.20	455.40
O-2	301.20	17.70	390.60
O-1	258.30	13.20	350.10
WARRANT OFFICERS			
W-4	$423.30	$25.20	$491.10
W-3	357.30	20.70	439.50
W-2	321.60	15.90	410.70
W-1	272.10	13.80	357.90
ENLISTED MEMBERS			
E-9	$341.10	$18.60	$465.00
E-8	316.20	15.30	433.20
E-7	270.00	12.00	402.90
E-6	239.70	9.90	365.70
E-5	221.40	8.70	324.90
E-4	192.30	8.10	280.80
E-3	186.60	7.80	258.30
E-2	158.40	7.20	258.30
E-1	144.30	6.90	258.30

* Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed service without dependents is authorized by title 37, United States Code, and part IV of Executive Order 11157, as amended.

** Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed service without dependents who, under 37 U.S.C. 403(b) or 403(c), are not entitled to the full rate of basic allowance for quarters, is authorized by 37 U.S.C. 1009(d) and part IV of Executive Order 11157, as amended.

SCHEDULE 8--PAY AND ALLOWANCES OF THE UNIFORMED SERVICES (PAGE 4)

Part III--BASIC ALLOWANCE FOR SUBSISTENCE RATES

Officers (per month) $114.90

Enlisted Members (per day):

	E-1 (less than 4 months' active duty)	All Other Enlisted
When on leave or authorized to mess separately	$5.06	$5.48
When rations-in-kind are not available	5.72	6.19
When assigned to duty under emergency conditions where no messing facilities of the United States are available	7.58	8.19

Part IV--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c) of title 37, United States Code, is $504.30.

[FR Doc. 88-203
Filed 1-4-88; 11:02 am]
Billing code 3195-01-C

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Tuesday, January 5, 1988

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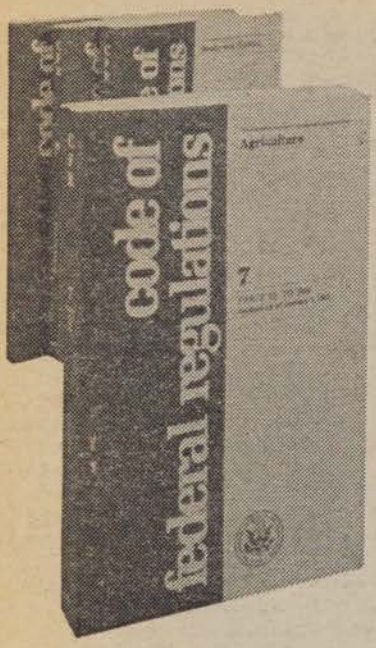
Revised as of July 1, 1987



Just Released

Code of Federal Regulations

Revised as of July 1, 1987

Quantity	Volume	Price	Amount
_____	Title 33—Navigation and Navigable Waters (Parts 1–199) (Stock No. 869-001-00116-0)	$27.00	$_____
_____	Title 40—Protection of Environment (Parts 190–399) (Stock No. 869-001-00135-6)	29.00	_____
		Total Order	$_____

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