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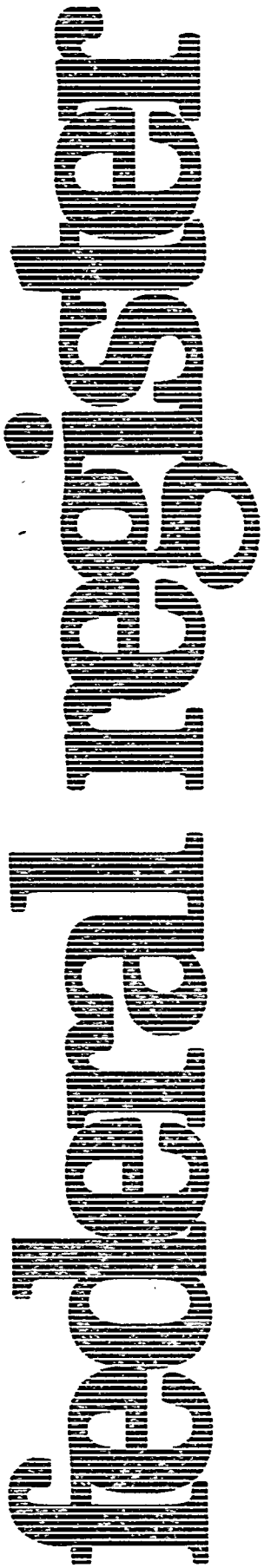

Wednesday
January 11, 1984

Selected Subjects

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Reader Aids
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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 339, 432, 752, and 831

Medical Determinations Related to Employability; Reduction in Grade and Removal Based on Unacceptable Performance; Adverse Actions; and Retirement

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: These amendments to OPM's regulations provide specific authorities and procedures for agencies to require or request medical information relevant to making a personnel management decision. The regulations implement recommendations resulting from OPM's study of "fitness for duty" examination procedures, and extensive agency and OPM experience with the procedures on an optional basis during the past three years. The regulations focus on the proper collection and use of medical information and medical examinations to make appropriate and defensible decisions in all personnel areas including leave management, disability retirement, personnel actions based on deficient performance, conduct, or attendance, and reassignment of injured or other qualified handicapped employees requiring reasonable accommodation. They set procedures for consideration of a medical condition raised by an employee in connection with an action for unacceptable performance or an adverse action. Finally, these regulations delineate the conditions under which an agency must file an application for disability retirement on an employee's behalf.

EFFECTIVE DATE: February 10, 1984.

FOR FURTHER INFORMATION CONTACT:
Part 339—Nancy Kingsbury (202) 632–6013
Parts 432 and 752—Cynthia Field (202) 254–5517
Part 831—Mary Sugar (202) 632–4634.

SUPPLEMENTARY INFORMATION:

General

OPM published proposed regulations on July 1, 1983 (48 FR 30398), which would specify the authorities and procedures for agencies to collect and use medical information in personnel management decisions. These regulations were necessary (and, indeed, have been under development for several years) because previous authorities to obtain and use medical information, particularly in so-called "fitness for duty" situations, were unclear; and there was substantial evidence that those authorities had been abused, especially in the case of psychiatric examinations and agency-filed disability retirements. An earlier version of proposed regulations in this area had been published in August 12, 1980 (45 FR 53481) and the comments received, and extensive experience and insight which developed in the interim, were included in the revised proposed regulations published in July.

OPM received numerous comments on the proposed regulations from agencies, unions, professional organizations and individuals. Although there were a number of suggestions for specific improvements in the regulations, nearly all of the responses expressed positive support for the general approach described in the regulations for obtaining and using medical information in personnel decisions. In particular, the comments noted strong support for the clear-cut obligation on the employee, as reflected in the regulations, to provide acceptable evidence about a medical condition in a wide range of situations in which a benefit or special treatment is being requested. Agency authority to order medical examinations has been significantly limited in recognition that, except in certain limited circumstances, the burden of proof is on the employee and, if he/she fails to provide adequate evidence for the agency to conclude that a medical condition exists which needs to be taken into account, the agency is free to proceed with a decision (adverse action, denial of request) having fully met any procedural obligation related to the health status question.

The regulations state what is required when an employee wishes to raise a health concern in connection with a possible or proposed performance-based action, or with a proposed adverse action. They make technical changes to Part 831 to conform to changes in Part 339, and they set forth restrictions on agency-filed disability retirement applications. These provide that the agency has to have issued a decision to separate the employee, that the agency has documentation of disease or injury, that the employee is incapable of making a decision to file an application, that he or she has no personal representative or guardian, and that no immediate family member is willing to file an application for him or her. Combined with earlier guidance on disability retirement, these provisions are intended to provide a framework for agency decisions on disability retirement.

Reasonable Accommodation

The supplementary information in the proposed regulations noted that the definition of "medical condition" in Part 339 is somewhat narrower than the definition of "physical or medical impairment" in 29 CFR 1613.702(b). However, nothing in these regulations should be construed to relieve an agency of its obligations under 29 CFR 1613.704 to provide reasonable accommodation to a handicapped person. Therefore, it is entirely possible in a specific situation that an employee will not be able to demonstrate the existence of a "medical condition" as defined in these regulations, but the employee may still have a physical or medical impairment which requires reasonable accommodation. An example is an employee found to be mentally retarded.

In the sections below, the specific comments received are itemized, and the related decisions about the final regulations are noted and explained.

Part 339: Medical Determinations Related to Employability

Subpart A—General

Section 339.101 Purpose.

Comment: One agency suggested that the application of Part 339 should be expanded to include former employees who are claiming a benefit deriving from the period during which they were employed.

Response: OPM agrees that these are circumstances wherein agencies have a real interest in obtaining medical

information concerning former employees (for example, to determine whether a position is available which could be offered to a former employee who is receiving workers compensation benefits). However, there is no authority for the former employing agency under Title 5, U.S. Code, to require medical information from former employees, except to the extent that a former employee is an applicant for a position. The Department of Labor has authority to require submission of medical information by former employees receiving workers compensation benefits, and OPM has similar authority for disability annuitants. There is no other legal authority to require such information. Therefore, there is no basis to extend application of Part 339 to former employees.

Section 339.102 Definitions.

"Medical condition"

1. *Comment:* A number of agencies and several unions and other organizations again questioned the validity and/or practicality of excluding from the definition of psychiatric disease (as a medical condition) "personality, character, behavior or adjustment disorders." These objections were based on several arguments:

(a) That it is not always possible to separate clearly a medically definable psychiatric condition from personality, character, behavior, or adjustment disorders.

(b) That, assuming it is medically possible to make a distinction in a reliable way, the person making a decision whether to request medical information under these regulations would not be capable of differentiating between a psychiatric condition and a personality, behavior, character or adjustment disorder, and so could have an ambiguous obligation under the regulations with respect to whether medical information could or should be requested.

(c) That the underlying logic for the exclusion—that personality, character, behavior and adjustment disorders are hereditary or developmental in nature, or are transient, and so should not be considered as disease processes—is not technically supportable.

Response: OPM's own analysis and recent experience in the consideration of psychiatric disease and related disorders in personnel decisions supports the arguments offered by commenters that the definition of psychiatric disease cannot, as a practical or medical technical matter, differentiate between "psychiatric disease" and "personality, character, behavior or adjustment disorder." Moreover, we have concluded that, even if such differentiation were possible, personality and related disorders are properly considered "medical conditions" for some personnel decision purposes. We have also concluded that, in those instances where a particular disorder would not be considered to be a "medical condition," (that is, in a particular case it is purely developmental or transient and amendable to control and treatment, and so would not be a "medical condition" for disability retirement purposes), the decision can adequately be derived from other program criteria, such as that the condition pre-existed appointment or is not a permanent condition. Therefore, we have deleted the exclusion of personality and related disorders from the definition of "medical condition" in the final regulations.

2. *Comment:* Two professional organizations suggested that the term "psychiatric disease" was not desirable, since the disagnostic manual for such disorders does not contain an inclusive construct "physical disease," but rather refers to "mental disorders."

Response: While it is important, when regulations address issues in the domain of other expertise, to be as precise as possible, it is also important to use terms which can be applied accurately in their generally acceptable meaning. For that reason, OPM believes that "psychiatric disease" is more semantically precise for the purpose of defining "medical condition" than the broader "mental disorder" would be. While it is desirable to define specific cases with reference to the diagnostic framework of the American Psychiatric Association's *Diagnostic and Statistical Manual,* it is not feasible to adopt that external reference in defining the scope of a regulation.

"Medical documentation"

3. *Comment:* Most of the commenters found the identification of the specific content of "medical documentation" to be generally acceptable and helpful to the objective of specifying the scope of content of medical information which would meet the information requirements of the decision to be made. A few individual commenters raised specific concerns with specific items in the list which are addressed below. Several agencies and other commenters pointed out that, depending on the nature of the condition, not all of the items of information listed in the definition may be necessary or appropriate, and that to require all of the information in all cases would be costly and an unnecessary burden on the applicant or employee.

Response: Although all of the information listed is necessary about many conditions in particular circumstances, it was not the intent of these regulations to require information to be documented which is not necessary and relevant to the decision being made. Therefore, the final regulations have been amended to clarify that "medical documentation" in a specific situation includes the information identified in writing by the agency which is necessary and relevant to the situation at hand.

4. *Comment:* Several commenters (and specific situations which have arisen since the proposed regulations were published) have brought to OPM's attention that, depending on the decision being made, "medical determination" as defined could be provided by a source other than a "physician" as defined, and be acceptable for, or indeed critical to, the decision. Examples include information about psychiatric or psychological condition from a clinical psychologist (when the decision involves authorization of leave for treatment); or information on the impact of a medical condition on the duties of a job from a vocational rehabilitation specialist (when the decision involves the feasibility of reasonable accommodation).

Response: OPM believes that, in most situations, the type of information identified as "medical documentation" would only be properly available from a "physician". The concerns expressed by the commenters and the examples provided indicate that absolute restriction of the source of such information as it is used in all decisions is inappropriate, and would be inconsistent with the flexibility inherent in the regulations governing some personnel decisions in which medical issues arise. Therefore, the final regulations have been modified to clarify that, in some instances, information from other sources who are professionally authorized to provide it may be acceptable. At the same time, when the proposed Part 339 regulations were developed, the separate definitions of "medical documentation" in Part 831 were deleted and cross-referenced to Part 339. Therefore, it is now necessary to further amend the proposed § 831.502 to clarify that, for purposes of disability retirement annuity decisions, "medical documentation" must be a statement from a physician.

5. *Comment:* Two agencies expressed concern that the description of "clinical

findings" identified as (b) under "medical documentation" is undesirably ambiguous in the meaning of "most recent medical evaluation." One of those agencies raised a related concern about the meaning of "current clinical status" under (c). One agency suggested that a specific time limit be identified to define the necessary recency or currency of the information.

Response: OPM appreciates an agency's concern that there be sufficient authority to disallow information which is not reasonably descriptive of present health status. However, beyond the requirement that a diagnosis of "current clinical status" be provided, it is not possible or desirable to identify a time frame within which clinical findings must be made. The recency of findings necessary to make an assessment of current clinical status varies widely with the nature of the condition. A specific criterion for recency of clinical findings could result in unnecessary medical evaluations, and would not necessarily insure that sufficiently recent findings were available to assess current clinical status. Therefore, we have not adopted the suggestion to further specify the intent of "most recent medical evaluation". The term "current" in (c), "current clinical status", is sufficiently precise in its standard usage to permit necessary decisions to be made.

6. *Comment:* One agency (with expertise in psychiatric disorders) and one professional organization suggested that the definition of "clinical findings" as it applies to psychiatric disease is incomplete and possibly misleading. In particular, it was noted that psychological testing is not always necessary or appropriate for diagnosis of psychiatric disease, and that other tests may be necessary in a particular situation.

Response: OPM is persuaded that the identification of only mental status examinations and psychological tests as a basis for psychiatric diagnosis is simplistic and could lead to unnecessary testing or insufficient information. The final regulations have been amended to clarify that the results of any appropriate diagnostic tests should be included.

7. *Comment:* One union objected to the inclusion of information at (a) and (f) related to the history of a condition and, particularly, the impact of the medical condition on life activities off the job. The union argued that OPM has no authority to require such information, that seeking such information violates the employee's right to privacy, and that authorities to obtain information on outside earnings are sufficient to prevent abuse.

Response: The history of a medical condition is, where identified as relevant and necessary, a basis for determining current clinical status and may be necessary to determining the impact of the condition on the job. Similarly, information about the impact of a condition on life activities off the job may be relevant to, and at a minimum must be consistent with, conclusions or recommendations about duty restrictions or accommodations on the job. For example, a medical condition which warrants restriction from lifting on the job should also result in restrictions on lifting in other life activities. Thus, it is both appropriate and not an invasion of privacy to seek information about impact off the job where that information is relevant and necessary to the decision at hand, or to a determination that the conclusions and recommendations are not inconsistent with generally accepted medical principles and practice. OPM points out that, in many instances, the employee raises the medical issue in connection with a request for a benefit.

"Review of medical documentation."

8. *Comment:* One agency suggested that the phrase "or in coordination with" be dropped from the definition of review of medical documentation, on the grounds that only a physician could make the determination required by the criteria at (a) and (b).

Response: It was not the intent of the definition that the determinations required by (a) and (b) would or could be made by a non-physician. However, in some circumstances it is possible to administratively determine that the criteria have been met through consultation with a physician about the issues involved without actual assessment of the medical documentation by a physician, or for non-physician reviewers who are working under specific criteria established by or in consultation with a physician to determine that medical evidence is clear on its face. Guidance issued under this part will encourage agencies to substantiate any conclusion that criteria (a) and/or (b) are not met through explicit assessment by a physician, usually a medical specialist.

9. *Comment:* One agency recommended changing (b) to read "the conclusions and recommendations are *not inconsistent* with generally accepted medical principles and practice."

Response: This grammatical form is logically equivalent to "are consistent with", and the change would have the effect of giving the employee the benefit of the doubt in those circumstances where "generally accepted medical principles and practice" are not readily specifiable. That benefit is consistent with the intent of the underlying framework for making personnel management decisions, and so the suggestion has been adopted.

Section 339.301 Examination authority.

1. *Comment:* Several agencies identified specific circumstances wherein the proposed regulations do not provide adequate authority to require an employee to report for a medical evaluation. These circumstances include:

(a) The need for current medical information to assess whether an employee receiving workers compensation benefits can be assigned to a position consistent with the limitations of his or her condition.

(b) The need for medical information to determine if an employee is physically qualified for a position to which he or she has reassignment rights in reduction in force.

(c) The need for medical information about employees occupying positions requiring medical surveillance to insure that established security or reliability of job performance requirements can be met.

(d) The need for medical information at the time of separation from a position to determine whether injury or harm occurred during employment even if such a condition is not otherwise identified as having an impact on job performance during employment.

Response: (a) OPM agrees that, when an agency has reason to believe that an employee who is receiving workers compensation benefits may be capable of performing the duties of either his or her original position, a modified or restructured job, or a different position, there is a need for current medical information to assess whether an offer to return to work or to regular duties is appropriate. Although the Department of Labor has authority to require medical information to be submitted in such cases, if an agency provides evidence that recovery has taken place or the employee may be able to perform an available job, DOL responses to agency requests for determinations necessarily consume time in which agencies are unable to pursue active return-to-duty efforts because no current medical information is readily available. The final regulations have been modified to provide a limited authority to require medical information in those situations where the agency has identified a specific assignment or position to which

the agency can assign the employee if the medical condition is compatible with the duties of the job.

Guidance issued by OPM, in conjunction with the Dapartment of Labor, will require that the employee be informed of the duties of the assignment or position at the time the medical information is required, and the agency would be obligated to assign the employee to that job if the medical information (consistent with generally accepted medical principles and parctice) indicates that he/she is capable of performing the job.

One agency suggested that the authority be expanded to require that employees receiving workers compensation submit to medical examinations for the purpose of "verifying" the medical condition for which compensation is being paid. Authority to require medical information for that purpose rests solely with the Department of Labor, and it would not be appropriate for such authority to be addressed in Part 339.

(b) OPM agress that, when an employee has assignment rights in a reduction in force to a position which requires specific physical capacities to preform, agencies should obtain medical information to insure that the individual is capable of performing the duties of the position. The final regulations have been modified to include an authority to require an employee who is released from his/her competitive level to undergo an examination to determine if he/she is physically qualified for any position to which he/she has assignment rights. However, if the employee claims that he/she cannot perform the duties of the job because of physical or medical condition, he or she has the responsibility to provide medical documentation sufficient to support that claim. Agencies, must, however, be aware of the obligations of 29 CFR 1613.204 regarding reasonable accommodation.

(c) OPM agrees that it may be necessary for agencies to establish programs of medical surveillance to monitor employee health status to insure that critical job functions can be safely and efficiently performed, or to insure that injury or harm is avoided when employees are exposed to occupational or environmental hazards. The proposed regulations clearly contemplated this need in the authority to require medical information when employees occupy positions subject to occupational/environmental hazards. The final regulations have been amended slightly to clarify the intent to provide authority to require medical information when employees occupy positions requiring programs of medical surveillance, established under OPM or agency regulations, to regularly monitor health status for valid job-related reasons.

(d) OPM agrees that it is desirable to require medical examinations for separating employees who have worked in positions subject to environmental/occupational hazards, to determine if injury or harm has occurred which is not otherwise apparent, but which may be related to an entitlement arising from the period of employment. However, the authorities for such examinations are clearly covered by the general authorities to require medical information under established programs of medical surveillance as described above.

2. *Comment:* One agency suggested clarification of the third condition under which mandatory examinations could be required to make explicit the intent that the "direct question" about an employee's continued capacity be related to the physical or medical requirements which directly underlie the authority to require the examinations, and to reduce the likelihood that the authority will be construed to authorize examinations when the capacity to perform is not related to a medical condition.

Response: The scope of these regulations from their inception has been to provide adequate authority for agencies to resolve situations where health status was an issue related to the job, and to eliminate those circumstances where medical examinations would be demanded in an effort to deal with non-medical or non-physical job issues. This recommendation strengthens those objectives and so it has been adopted.

3. *Comment:* One agency suggested that the conditions under which an agency may offer examinations be expanded to specify requests for an extended leave of absence or advance sick leave.

Response: The proposed regulations clearly contemplated that an agency would have authority to offer an examination when an employee requests extended leave or advance sick leave (under "any other benefit or special treatment") and has furnished medical documentation. The employee also must under the regulations governing sick leave (§ 630.403) provide administratively acceptable evidence before sick leave (or leave without pay in lieu of sick leave) can be granted. Agencies have substantial discretion to determine what is "administratively acceptable evidence", subject to internal regulations and negotiated agreements. Further emphasis on extended leave or sick leave in these regulations is not necessary, and could give the unintended impression of conflict with matters already under agency authority.

Section 339.302 Examination procedures.

1. *Comment:* Three unions and one agency expressed objection to the provision at (b) which requires the agency to designate the physician when examinations are ordered or offered under Part 339. The commenters recommended as an alternative the approach currently in use in "fitness for duty" procedures, wherein if the employee objects to the agency-designated physician, the employee may provide a list of medical specialists from which the agency may select a physician.

Response: The Part 339 regulations are explicitly intended to substantially constrain the number of situations where an agency may order an employee to undergo a medical examination. In most circumstances where the previous "fitness for duty" process would be initiated, the agency no longer has any authority to require an examination. Rather, the regulations provide that the employee bears the burden of demonstrating that a medical condition exists which the agency must take into account. Under these provisions, the employee has total control over which physician will be identified, although the information provided must meet the criteria for "medical documentation" as defined. Only under the very limited circumstances where medical standards or medical surveillance programs exist, or certain other limited situations, is the agency authorized to require an examination. Even in those circumstances, the regulations provide that the agency must offer the employee an opportunity to submit information from the physician of his/her choice. Any information that the employee submits would have to be taken into account in the agency's decision.

In all other circumstances, the agency may *offer* (that is, pay for) an examination. In both the circumstance where the agency orders an examination (given that the employee must also be given an opportunity to submit additional information from his/her own physician) and the circumstance where the agency offers (and pays for) an examination, OPM believes it is appropriate for the agency to identify the physician. In an appropriate circumstance, it would be permissible for the agency to select the employee's

physician. However, since the employee has ample opportunity to submit additional information, and since the agency has a reasonable interest in controlling the source of the information in those circumstances where an agency ordered or offered examination is appropriate, no change in the proposed regulations is warranted.

It is important to emphasize in this context that the regulations do not encourage or even contemplate that the personnel management decision would be made by the physician, be it an employee or agency-identified physician. The deciding official is a supervisor or manager who uses, as a part of the data in his/her decision, the medical information available from any source.

2. *Comment:* Several agencies expressed concern that the notice requirement in § 339.302 (a) and (b) would be unduly burdensome in those situations where the medical examinations were periodic as a part of a program of continuing medical surveillance.

Response: OPM agrees that, when a medical examination is required or offered as a part of a series of periodically scheduled examinations in an established medical retention or surveillance program, the regulations should not require specific notice of the reasons for the examination, the consequences of failure to cooperate, and the right to submit additional information in advance of each examination. The final regulations have been clarified to indicate that, for examinations which are a part of an established medical surveillance program, notification of the reasons for the examinations and other related matters may be provided once, at the initiation of the program and/or on appointment to an affected position.

3. *Comment:* Two professional organizations and one union raised a question about the process in § 339.302(e) for ordering a psychiatric examination. The commenters pointed out that, while the concept of requiring a general medical examination prior to the ordering or offering of a psychiatric examination is sensible, the underlying presumptions of the process are not warranted: That (a) a general practitioner would be capable of identifying that psychiatric symptoms were present, and (b) if disease caused by organic conditions is found (or ruled out), then psychiatric disease requiring evaluation is not present.

Response: The points made are sound, and guidance issued to implement these regulations will encourage agencies to have general medical information reviewed by medical specialists when potentially controversial outcomes are possible (such as an ordered psychiatric evaluation). The practice should permit a sensible outcome in both sorts of situations contemplated in the comments. However, no changes are warranted in the regulations, since they contain adequate authority to seek outside review of the initial medical information, and these are some circumstances where a determination whether to order a psychiatric evaluation can, in fact, be made by the agency's physician, based on review of the examination results.

Section 339.305 Payment for examinations.

Comment: Two unions expressed concern that the requirement that employees pay for medical examinations conducted by a private physician selected by the applicant would "penalize" use of private physicians and is inconsistent to current practice under FPM Chapter 339–4.

Response: Under the proposed regulations, agencies would continue to have authority to pay for examinations if the agency orders or offers the examination and chooses to have the examination conducted by a physician of the employee's choice. (These are the circumstances analogous to the current practice in FPM Chapter 339–4.) However, in all other circumstances, the employee bears the clear burden of proof to demonstrate that a medical or physical condition exists, and that burden reasonably includes the cost of any necessary medical examination. In most such circumstances, the employee is asking for some benefit (e.g., sick leave, accommodation, or relief from responsiblity in an adverse action situation), so it would be inappropriate for the agency to pay for an examination required to substantiate the request.

Section 339.304 Records and reports.

1. *Comment:* One agency expressed concern that the regulations required clarification concerning the applicability of privacy requirements and release.

Response: Section 339.304 (a) and (b) specifically provide that medical records will be received and maintained in accordance with OPM regulations, and will be released to the affected individual in accordance with the Privacy Act access requirements.

2. *Comment:* One agency recommended that the requirement at §399.304(c), that copies of medical records obtained through examinations ordered or offered under Part 339 which involve individuals receiving workers compensation benefits (including continuation of pay) should be sent to the Office of Workers Compensation Programs (OWCP), Department of Labor, be corrected to clarify that records related to occupational disease (as well as those related to traumatic injury) should be forwarded.

Response: This suggestion has been adopted in the final regulations.

3. *Comment:* One agency suggested that the requirement to transmit copies of examination results to OWCP be modified to limit the obligation to those medical records which are relevant to the employee's claim.

Response: After consultation with OWCP, OPM has concluded that it would not be practical to establish criteria for a record's relevance to a claim, and since authority to adjudicate claims is solely the Department of Labor's, the regulation has not been so modified.

Part 432: Reduction in Grade and Removal Based on Unacceptable Performance

1. *Comment:* Two agencies pointed out a citation to §339.301(b)(3), which does not exist. One of these suggested the reference should be to §339.301(a)(3) or to § 339.301(d).

Response: It is clear that if an agency has the authority under §339.301(a)(3), it may order an examination under that subparagraph. Otherwise, it has the option of offering an examination under §339.301(d). OPM has corrected this reference to include both citations.

2. *Comment:* An agency suggested that the employee be held responsible for providing the medical documentation within the time frames for responding to an agency proposal.

Response: OPM recommends that agencies give employees the opportunity to raise medical conditions at the time they give employees an opportunity to demonstrate acceptable performance, before any action is proposed. Guidance to this effect will be put in FPM material. Many employees will supply such information then; others, for whatever reason, will not do so until an action is actually proposed. OPM has clarified that two time periods for submitting information are possible, and also has required that the employee, whenever possible, supply documentation of a medical condition during the opportunity period. This would be beneficial both to the employee and the agency, because the agency will have more time to consider what can be done. However, if the employee does not supply this information until the proposal period, OPM is requiring the employee to supply

it within the reply period, whenever possible. OPM realizes that delays sometimes arise in obtaining this information from a physician. If the employee supplies information after the time for the reply, but before expiration of the notice period, the agency will likely be able to take it into consideration in arriving at its decision. As noted earlier, however, the optimal time for supplying medical documentation is during the opportunity period.

3. *Comment:* A union noted that § 432.204(d) permitted the agency to order a medical examination.

Response: Note OPM's response to the first comment. An agency would have the authority to do so under the strict criteria of § 339.301(a)(3). In most cases, the agency would only have the authority to offer an examination.

4. *Comment:* An agency recommended that OPM eliminate the proposed requirement that agencies conclude that a medical condition has caused the performance deficiency before offering information on disability retirement. The agency felt that the necessity to draw this conclusion was irrelevant to the issue of making disability retirement information available and should be eliminated.

Response: OPM agrees and has made the change, believing that it is better to err on the side of providing disability retirement information when there is any question.

5. *Comment:* An agency recommended reference to § 831.501, which provides for simultaneous processing of personnel actions and employee applications for disability retirements.

Response: OPM has added this reference, as well as a reference to § 831.1203.

6. *Comment:* A union is concerned that the language of § 432.204(d), which requires agencies to "consider" the provisions of 29 CFR 1613.704 on agency obligations for reasonable accommodation, will weaken agency compliance with this regulation.

Response: OPM has changed the wording to meet this concern, but wishes to point out that the requirements of 29 CFR 1613.704 implement a different law, which agencies must meet independent of any injunction to that effect in Title 5, CFR. Thus, the last statement in this section is merely a strong reminder to agencies not to assume that this section of 5 CFR is the only requirement the agency must meet when questions of a medical condition arise for one reason or another.

Part 752: Adverse Actions

1. *Comment:* Several agencies pointed out the citation to a nonexistent § 339.301(b)(3). As one agency correctly noted, the proper citations would be either to § 339.301(a)(3) or to §339.301(d).

Response: As noted above, it is clear that both citations are applicable, and OPM has corrected this reference to include both.

2. *Comment:* Several agencies have recommended that the language in § 752.404(c)(3) be made consistent with that in § 432.204(d), so that it will be clear that the employee is to raise any medical condition if he or she wishes the agency to consider it.

Response: OPM has made the conforming change, but points out that the provisions of 29 CFR 1613.704 will also govern agency obligations in this regard.

3. *Comment:* Two agencies commented on the phrase "the employee shall furnish medical documentation," recommending that the employee be given a reasonable time to furnish such documentation within the time frame for responding to a proposed agency action.

Response: OPM has made the change to conform to that made in § 432.204(d).

4. *Comment:* A union commented that § 752.404(c)(3) would allow the agency to require a medical examination.

Response: See OPM's responses to comments 1 and 3 under Part 432.

5. *Comment:* An agency asked if the offer of a medical examination would delay an agency action.

Response: Possibly it would; OPM assumes that an agency would wish to await the results of the examination which it has offered before making any decision. The same agency asked if the employee's application for disability retirement would delay the agency decision. As we did in Part 432, OPM has referred to § 831.501, which covers this point.

6. *Comment:* Again, a union is concerned that the language which requires the agency to "consider" the provisions of § 1613.704 will weaken agencies' compliance with that regulation.

Response: See OPM's comments under comment 6 of Part 432.

Part 831: Retirement

Three agencies endorsed the proposed regulations as published, stating that they represent a significant improvement over existing guidance, and expressed interest in early finalization.

The remaining comments and suggestions are summarized below together with the actions taken.

1. *Comment:* A union objected to § 831.501(d), which provides that an employee's application for disability retirement shall not preclude or delay any other appropriate personnel action by the employing agency.

Response: This provision was added to clarify that an employee's decision to apply for disability retirement is independent of an involuntary separation, and that the separation is not to be delayed for reasons beyond the agency's control. No change has been made.

2. *Comment:* Several agencies suggested that there is a conflict between the provisions of §§ 831.502(b)(1) and (3).

Response: OPM does not agree that there is a conflict. Therefore, no change has been made to either provisions. Section 831.502(b)(1) provides for documentation in support of a claim for disability retirement that demonstrates "deficiency in service with respect to performance, conduct or attendance" (that is, where actual performance has declined to a less than successful level and is the basis for the disability application). The phrase "or in the absence of any actual service deficiency, a showing that the medical condition is incompatible with either useful service or retention in the position" recognizes that, as a practical matter, there may not be a record of a decline in actual performance when an application for disability is based on the employee's restriction from performing critical or essential job tasks, or from being at work.

Paragraphs (1) and (3) of § 831.502(b) are two of seven considerations used by OPM in determining the sufficiency of a claim for disability retirement. Each consideration relates to the other either in whole or in part. Paragraph (3) relates to paragraph (1) only in part, the first part, and is intended to mean that when the application for disability retirement is in fact based on a decline in actual performance there must be "A relationship between the service deficiency and the medical condition such that the medical condition has caused the service deficiency." In the absence of such a showing OPM would look to see whether the employee suffers from a disease or injury that caused either a restriction from performing the essential duties and responsibilities of the job or the inability to work at all.

3. *Comment:* One agency suggested that we insert "or agency" after the word applicant in § 831.502(b), *Proof of Claim.*

Response: OPM adopted this suggestion.

4. *Comment*: One agency suggested that we limit placement in the agency, as required by § 831.502(b)(7), to those agency facilities in the commuting area that are serviced by the same appointing authority.

Response: We have adopted this suggestion. Some agencies have several operating facilities in the same commuting area. It would be an administrative burden to require that agencies survey all available vacant positions, at the same grade and pay level to which the employee is qualified for reassignment, in *all* agency facilities or that agencies reassign an employee to a position in an agency facility that is not serviced by the same appointing authority. Since OPM currently instructs agencies to consider the employee for reassignment to all available vacant positions at the same grade or pay level in agency facilities that are serviced by the same appointing authority in the commuting area, this is not a policy change. OPM has consistently maintained that agency placement is limited by administrative authority. OPM does not expect that the employee will be reassigned to a position outside the appointing authority for the primary agency subdivision, i.e., bureau, group, division, etc., where he/she is assigned to work.

5. *Comment*: Commenting labor organizations and two agencies felt that adverse action procedures for removal and the agency-filed application should parallel each other, but the removal action required by § 831.1205(a) should not automatically precede the agency's request for disability retirement.

Response: OPM declines to adopt this suggestion. Current regulations and guidance provide for the retention of the employee on the agency's rolls until OPM has acted on the agency's application for an employee's disability retirement. If OPM allows the disability claim, the employee is then removed from the agency's rolls onto the civil service annuity rolls. Should OPM disallow the claim, the agency is left with an employee who it has already determined is no longer employable and who it has notified of an intent to remove from the Government. The time that elapses between the agency's notice of proposed removal and the disallowance of the disability claim by OPM can be substantial, and if the agency proceeds with an action under Parts 432 or 752 of OPM's regulations, the time may be so long that the agency needs to compile further documentation to support an action under the removal procedures.

The change contained in § 831.1205(a) is consistent with the purposes of Civil Service Reform Act of 1978 that actions adverse to employees be based on documented deficiencies in performance, conduct, or attendance, and that warranted actions be taken and completed expeditiously. It is also consistent with conclusions of former Congresswoman Spellman's Subcommittee on Compensation and Employee Benefits that separations for medical reasons may be more stigmatizing than those based on the actual deficiency in performance, conduct, or attendance. OPM intends that agencies' removal actions be reviewable quickly on their merits and that they stand or fall based primarily on whether the employee concerned can provide useful and efficient service to his/her employing agency. Whether or not the employing agency concurrently files an application for disability retirement benefits for the employee is a separate issue. Even if the agency did not do so as early as it might have, this error would not be harmful to the employee since the one-year time limit for filing does not apply when an employee is found to have been incapable of making a decision to file an application for disability retirement at the time of his/her separation.

OPM wants to discourage agencies from attempting to file an application for disability retirement on behalf of the employee where some other personnel action is appropriate, even an adverse action. The unnecessary use of the "agency-filed" disability retirement provisions of the Civil Service Retirement law as an agency management tool is viewed by OPM as an abuse of this provision. Under the revised procedures, we believe that managers will be more confident in addressing employee performance problems and that they will not delay in taking appropriate and timely actions based on the employee's performance.

6. *Comment:* Some agencies object to the language in § 831.1203(a)(2) that limits agency-filed disability retirement applications to cases involving psychiatric disease. Whether the disabling condition is physical or mental, agencies feel that they should be permitted to file on the employee's behalf so long as the criteria contained in §§ 831.1203(a) (3) and (4) are met. They felt that further restriction is inappropriate and fails to recognize the employee's past contributions.

Response: OPM agrees that the proposed language is unnecessarily restrictive. The amended language encompasses all situations where conditions are such that the agency determines that the employee is incapable of making a decision (due to psychiatric disease or otherwise) to file an application for disability retirement.

7. *Comment:* Several agencies objected to the non-recognition of union representatives as personal representatives under § 831.1203(a). They felt that the union's function is inextricably linked with protecting employee's interests.

Response: An employee's affirmative selection of representative (usually an attorney) demonstrates an understanding that his/her employment is threatened and an ability to act on his/her own behalf by making a conscious decision to prevent the agency from taking an action adverse to his/her interest. When an employee demonstrates the ability to make this kind of decision to attempt to protect his/her employment, OPM believes that the employee should also be presumed to be capable of making a decision to file an application for disability retirement, whether or not this decision to protect the job appears to be in the employee's best interest. On the other hand, a union with exclusive representation in an agency is required by law to represent bargaining unit employees, and a union may represent an employee who did not specifically seek a union representative. OPM agress that when there is a union representative, further information should be sought to attempt to determine if the employee initiated a request for union representation or if the union offered its services to the employee.

Section 831.1203(a) is clarified, however, to distinguish between the responsibilities of a representative and the responsibilities of a prospective applicant for disability retirement benefits on an employee's behalf. Even when an employee engages an attorney, the attorney's authority to act on behalf of the employee is limited by the authorization given by the employee. Thus, even an attorney retained solely to represent an employee in his/her removal would not have the authority to file a disability retirement application on behalf of the employee. (See following comment.)

8. *Comment:* One agency commented that it is inappropriate to preclude agencies from filing on behalf of the employee under § 831.1203(a)(4) when existing family members refuse to take an interest or to express a willingness to act for the separated employee.

Response: An agency's responsibility to the employee is limited and is

secondary to that of immediate family members or guardians. By restricting those who can file an application for disability retirement on behalf of the employee, OPM hopes to have applications filed only by those who stand in a position to receive monies that may become payable from the Civil Service Retirement and Disability Fund for the use of the employee. Nonetheless, OPM does agree that family members are not always willing to assume responsibility for the care of a disabled relative.

Accordingly, we have amended § 831.1203(a)(4) and added § 831.1203(a)(5) to clarify that if the employee has no personal representative or legal guardian, and if immediate family members are unwilling to file an application on his or her behalf, the employing agency is not relieved of its obligation to file on the employee's behalf. OPM does not wish to make annuity payments to individuals (family members or others) unless they have expressed an interest and/or willingness to act for and care for the employee-annuitant. We believe that this change will ensure that annuity payments will be used for the care of the employee-annuitant or will be conserved for his/her use.

9. *Comment:* Section 831.1203(a)(4) places the burden on the agency to identify persons having status to file on the employee's behalf. One agency suggests that the employee should be responsible for notifying the agency whether there are persons standing ready to assume responsibility for his/her care.

Response: It is envisioned that the employee involved in an agency-filed case will be suffering from a disease or injury that will have resulted in an appreciable eroding of mental and sometimes also physical capabilities. To require that the employee make disclosure of the type suggested would be unnecessarily burdensome and ineffectual. Furthermore, information regarding the employee's immediate family can usually be obtained from agency records, the employee's supervisor, co-workers, etc. We do not contemplate a search beyond these sources.

10. *Comment:* One agency suggested that § 831.1203(b) should be revised to clarify that when the agency removes the employee and provides counsel relative to his/her possible eligibility for disability retirement, the information provided should be in writing.

Response: OPM has adopted this suggestion. A written record of what the employee is or is not told is most practical from an administrative standpoint. In the event that the employee later alleges that the agency did not provide correct or adequate information, the written record will help decide the issue.

11. *Comment:* One agency suggested that OPM change § 831.1205(b) to provide that its disability decision be issued to the employee and to the employing agency.

Response: OPM has adopted this suggestion.

12. *Comment:* Both commenting labor organizations and some agencies felt that OPM should not cancel an allowed agency-filed disability retirement as provided in § 831.1206 if the agency's removal action is reversed on appeal, especially when the reversal action is based solely on procedural error or some other basis not relating to the employee's mental or physical ability to successfully perform the duties of his/her position.

Response: This provision simply continues current case law under which the Merit Systems Protection Board may reverse OPM's approval of an agency-filed application for disability retirement and cancel the employee's separation if the agency's due process procedures were so deficient that the employee was significantly harmed. Since we are only substituting one due process for another, there is no basis for OPM to continue the annuity. Section 831.1206 provides that OPM will cancel the annuity when a final decision is issued. Accordingly, the annuity payment will continue pending the outcome of an appeal.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects

5 CFR Part 339

Government employees, Health.

5 CFR Part 432

Administrative practice and procedure, Government employees.

5 CFR Part 752

Administrative practice and procedure, Government employees.

5 CFR Part 831

Administrative practice and procedure, Claims, Firefighters, Government employees, Handicapped, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM is amending Title 5, Code of Federal Regulations, as follows:

1. Part 339—*Qualification Requirements (Medical)* is revised to read as follows:

PART 339—MEDICAL DETERMINATIONS RELATED TO EMPLOYABILITY

Subpart A—General

Sec.

Subpart B—Medical Disqualifications

Subpart C—Medical Examinations

Authority: 5 U.S.C. 3301; E.O. 9830, Feb. 24, 1947.

Subpart A—General

§ 339.101 Purpose.

The applicability of this part to applicants and employees is defined by the specific regulation governing the personnel decision in which the medical issue arises. This part also defines the circumstances under which medical documentation may be acquired and under which examinations and evaluations may be conducted to determine the nature of a medical condition, knowledge of which is necessary to make personnel determinations under any part of this title. Personnel decisions based wholly or in part on the review of medical documentation and the results of medical examinations and evaluations shall be made in accordance with all requirements of the appropriate part of this title and provisions of any other title.

§ 339.102 Definitions.

For the purpose of this part:

"Medical condition" means health impairment which results from injury or disease, including psychiatric disease.

"Medical documentation" or "documentation of a medical condition" means a statement which provides the following information, or the parts identified by the agency as necessary and relevant:

(a) The history of the specific medical condition(s), including references to

findings from previous examinations, treatment, and responses to treatment;

(b) Clinical findings from the most recent medical evaluation, including any of the following which have been obtained: findings of physical examination; results of laboratory tests; X-rays; EKG's and other special evaluations or diagnostic procedures; and, in the case of psychiatric disease, the findings of a mental status examination and the results of psychological tests;

(c) Assessment of the current clinical status and plans for future treatment;

(d) Diagnosis;

(e) An estimate of the expected date of full or partial recovery;

(f) An explanation of the impact of the medical condition on life activities both on and off the job;

(g) Narrative explanation of the medical basis for any conclusion that the medical condition has or has not become static or well stabilized;

(h) Narrative explanation of the medical basis for any conclusion which indicates the likelihood that the individual is, or is not, expected to experience sudden or subtle incapacitation as a result of the medical condition;

(i) Narrative explanation of the medical basis for any conclusion that duty restrictions or accommodations are or are not warranted and, if they are, an explanation of their therapeutic or risk avoiding value and the nature of any similar restrictions or accommodations recommended for non-work-related activities; and

(j) Narrative explanation of the medical basis for any conclusion which indicates the likelihood that the individual is, or is not, expected to suffer injury or harm by carrying out, with or without accommodation, the tasks or duties of a position for which he/she is assigned or qualified.

"Medical specialist" means any physicain who is board-certified in a medical specialty, or a physicain serving on active duty in the uniformed services who is board-eligible and who is designated by the uniformed service to perform examinations under this part.

"Physician" means a licensed Doctor of Medicine or Doctor of Osteopathy, or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this part.

"Review of medical documentation" means assessment of medical documentation by, or in coordination with, a physician to ensure that the following criteria are met:

(a) The diagnosis or clinical impression is justified in accordance with established diagnostic criteria; and

(b) The conclusions and recommendations are not inconsistent with generally accepted medical principles and practice.

"Static or well stabilized medical condition" means a medical condition which is not likely to change:

(a) As a consequence of the natural progression of the condition;

(b) Specifically as a result of the normal aging process; or

(c) In response to the work environment or the work itself.

"Subtle incapacitation" means gradual, initially inapparent impairment of physical or mental function which is likely to result in a performance failure, whether reversible or not.

"Sudden incapacitation" means abrupt onset of loss of control of physical or mental function.

Subpart B—Medical Disqualifications

§ 339.201 Medical disqualifications.

Subject to Subpart C of Part 731 of this chapter, OPM may deny an applicant examination, deny an eligible appointment, and instruct an agency to remove an appointee by reason of physical or mental unfitness for the position for which he or she has applied to which he or she has been appointed.

Subpart C—Medical Examinations

§ 339.301 Examination authority.

(a) An agency may require an individual who has applied for or occupies a position which has physical/medical standards for selection or retention, or which is part of an established program of medical surveillance related to occupational or environmental exposure or demands, to report for a medical evaluation:

(1) Prior to appointment or selection (including reemployment on the basis of full or partial recovery from a medical condition);

(2) On a regularly recurring, periodic basis; and

(3) Whenever there is a direct question about an employee's continued capacity to meet the physical or medical requirements of the position.

(b) An agency may require an employee receiving workers compensation benefits or assigned to limited duties as a result of an on-the-job injury to report for medical evaluation when the agency has identified an assignment or position (including the employee's regular position) which it reasonably believes the employee can perform consistent with the medical limitations of his/her condition. If the medical information (consistent with generally accepted medical principles and practice) indicates that the employee is capable of performing the duties identified, the agency will promptly return the employee to corresponding duty and pay status.

(c) An agency may require an employee who is released from his/her competitive level in a reduction-in-force to undergo a medical evaluation if the position(s) to which the employee has reassignment rights requires specific physical capacities to perform the duties of the job, and those physical capacities are different from those required in the employee's present position. The agency shall be aware of the affirmative obligations of the provisions of 29 CFR 1613.704, which require reasonable accommodation of a qualified employee who is handicapped.

(d) An agency may offer a medical examination when an individual has made a request for medical reasons for a change in duty status, assignment, or working conditions or any other benefit or special treatment (including reemployment on the basis of full or partial recovery from a medical condition) and the agency, after it has received and reviewed medical documentation, determines that it cannot grant, support, or act further on the request without verification of the clinical findings and current clinical status.

(e) Any medical evaluation required of an individual shall be carried out and used in accordance with 29 CFR 1613.708.

§ 339.302 Examination procedures.

(a) When an agency orders or offers a medical examination under this subpart it shall inform the applicant or employee in writing of its reasons for ordering or offering the examination and the consequences of failure to cooperate.

(b) The agency shall designate the examining physician, but shall offer the employee or former employee an opportunity to submit medical documentation from his or her personal physician, which the agency shall review and consider.

(c) The agency shall provide the examining physician with a copy of any approved medical evaluation protocol, any applicable standards and requirements for the position, and/or a detailed description of the duties of the position, including critical elements, as defined in Part 430 of this chapter, physical demands, and environmental factors.

(d) If the examination is ordered or offered as a regularly recurring, periodic examination as a part of an established medical retention or surveillance program under § 339.301(a), notification required under paragraphs (a) through (c) of this section may be made once, covering a series of examinations, provided the notice is issued prior to the first required examination.

(e) An agency shall order or offer a psychiatric evaluation to an employee only when the employee first provides results of a general medical or psychiatric examination, or the agency has first conducted a non-psychiatric medical examination, and, after review of the documentation or examination report, the agency's physician concurs that a psychiatric evaluation is warranted for medical reasons. Unless not medically indicated in the psychiatrist's judgment, a psychiatric evaluation normally consists of more than one interview with the employee and includes psychological testing.

(f) All medical specialty examinations ordered or offered under this subpart shall be conducted by a medical specialist.

§ 339.303 Payment for examination.

Agencies shall pay for all agency ordered or agency offered examinations of employees conducted under this subpart. Agencies shall also pay for all required pre-employment examinations of applicants which are conducted by a physician designated by the agency. However, applicants and employees, not the agency, shall pay for a medical examination conducted by a private physician selected by the applicant or employee, unless a statute, regulation, or appropriations act gives the agency authority to pay this expense.

§ 339.304 Records and reports.

(a) Agencies shall receive and maintain all medical documentation and records of examinations obtained under this part in accordance with instructions provided by OPM.

(b) The report of an examination conducted under this subpart shall be made available to the applicant or employee under the provisions of § 294.401 of this chapter.

(c) Agencies shall forward to the Office of Workers' Compensation Programs (OWCP), Department of Labor, a copy of all medical documentation and reports of examinations of individuals who are receiving or have applied for injury compensation benefits including continuation of pay. The agency shall also report to the OWCP the failure of such individuals to report for examinations that the agency orders under this subpart.

PART 432—REDUCTION IN GRADE AND REMOVAL BASED ON UNACCEPTABLE PERFORMANCE

2. Section 432.204 is amended by adding paragraphs (d) and (e) as follows:

§ 432.204 Procedures.

* * * * *

(d) *Consideration of medical condition.* If the employee wishes the agency to consider any medical condition which may contribute to his or her unacceptable performance, he or she shall be given a reasonable time to furnish medical documentation (as defined in § 339.102 of this chapter) of the condition. Whenever possible, the employee shall supply this information at the time the agency offers him or her the opportunity to demonstrate acceptable performance. If the employee offers such documentation after the agency has proposed a reduction in grade or removal, he or she shall supply this information within the time limits allowed for a reply, whenever possible. After its review of the medical documentation supplied by the employee, the agency may, if authorized, require a medical examination under the criteria of § 339.301(a)(3) and the procedures of § 330.302 of this chapter, or otherwise, at its option, offer a medical examination in accordance with the criteria in § 339.301(d) and the procedures of § 339.302 of this chapter. If the employee has five years of service, the agency shall provide information concerning disability retirement. The agency shall be aware of the affirmative obligations of the provisions of 29 CFR 1613.704, which require reasonable accommodation of a qualified employee who is handicapped.

(e) *Applications for disability retirement.* Section 831.501(d) provides that an employee's application for disability retirement shall not preclude or delay any other appropriate personnel action. Section 831.1203 sets forth the basis under which an agency shall file an application for disability retirement on behalf of an employee.

(5 U.S.C. 4305)

PART 752—ADVERSE ACTIONS

§ 752.04 [Amended]

3. In § 752.404, paragraph (c)(3) is added, paragraph (f) is revised, and paragraph (h) is added to read as follows:

* * * * *

(c) *Employee's answer.* * * *

(3) If the employee wishes the agency to consider any medical condition which may contribute to a conduct, performance, or leave problem, the employee shall be given a reasonable time to furnish medical documentation (as defined in § 339.102 of this chapter) of the condition. Whenever possible, the employee shall supply such documentation within the time limits allowed for an answer. After its review of the medical documentation supplied by the employee, the agency may, if authorized, require a medical examination under the criteria of § 339.301(a)(3) and the procedures of § 339.302 of this chapter, or otherwise, at its option, offer a medical examination in accordance with the criteria of § 339.301(d) and procedures of § 339.302 of this chapter. If the employee has five years of service, the agency shall provide information concerning disability retirement. The agency shall be aware of the affirmative obligations of the provisions of 29 CFR 1613.704, which require reasonable accommodation of a qualified employee who is handicapped.

* * * * *

(f) *Agency decision.* In arriving at its decision, the agency shall not consider any reasons for action other than those specified in the notice of proposed action. It shall consider any answer of the employee and/or his or her representative made to a designated official and any medical documentation furnished under paragraph (c) of this section. The agency shall deliver the notice of decision to the employee at or before the time the action will be effective, and advise the employee of appeal rights.

* * * * *

(h) *Applications for disability retirement.* Section 831.501(d) of this chapter provides that an employee's application for disability retirement shall not preclude or delay any other appropriate personnel action. Section 831.1203 of this chapter sets forth the basis under which an agency shall file an application for disability retirement on behalf of an employee.

(5 U.S.C. 7514)

PART 831—RETIREMENT

4. Section 831.109(b) is revised to read as follows:

§ 831.109 Initial decision and reconsideration.

* * * * *

(b) *Actions covered elsewhere.* (1) A request for reconsideration of

termination of annuity payments under 5 U.S.C. 8311–22 shall be made in accordance with the procedures set out in Subpart K of this part.

(2) A request for reconsideration of a decision to collect an erroneous annuity overpayment shall be made in accordance with § 831.1303(b) of this part.

* * * * *

5. Under § 831.501, paragraph (d) is revised and paragraph (e) added, to read as follows:

§ 831.501 Time for filing applications.

* * * * *

(d) An employee's application for disability retirement shall not preclude or delay any other appropriate personnel action by the employing agency.

(e) When a department or agency files an application for disability retirement of an employee, it shall do so in accordance with Subpart L of this part. Medical documentation shall be obtained in accordance with Part 339 of this chapter.

6. In § 831.502, paragraph (a) is amended by removing the definition of "medical information" and adding alphabetically the definitions listed below; and paragraph (b) is revised to read as follows:

§ 831.502 Disability retirement.

(a) * * *

"Examination" and "reexamination" mean an evaluation of evidentiary material related to the question of disability. Unless OPM exercises its choice of physician, the cost of providing medical documentation rests with the employee or disability annuitant, who will provide any information necessary to OPM's evaluation.

"Income from wages and/or self-employment" means money or property received by a disability annuitant as consideration for or in reward of personal services or a work product, or as a profit from a business (sole proprietorship, partnership, or corporation) wholly or partly owned by the disability annuitant and in which the disability annuitant has an active role in the management thereof; and also includes, for a disability annuitant reemployed by the Federal Government, any amount offset or deducted under the provisions of 5 U.S.C. 8344. Income is deemed earned in the calendar year in which it is received.

"Medical documentation," "documentation of a medical condition," and "physician" have the same meaning given these terms in § 339.102 of this chapter. "Medical documentation" submitted under this part shall be submitted from a physician.

* * * * *

"Same grade or pay level" means, in regard to a vacant position within the same pay system as the position the employee presently occupies, the same grade and an equivalent amount of basic pay, as defined in 5 U.S.C. 8331(3); in regard to a vacant position in another pay system, an equivalent amount of basic pay, as defined in 5 U.S.C. 8331(3).

* * * * *

(b) *Proof of claim.* No claim for disability retirement shall be allowed unless OPM determines that the claim should be granted based upon documentation provided by the applicant or the agency which demonstrates the following:

(1) A deficiency in service with respect to performance, conduct or attendance, or in the absence of any actual service deficiency, a showing that the medical condition is incompatible with either useful service or retention in the position;

(2) A medical condition which is defined as a disease or injury;

(3) A relationship between the service deficiency and the medical condition such that the medical condition has caused the service deficiency;

(4) The duration of the medical condition, past and expected, and a showing that the condition, in all probability, will continue for at least a year;

(5) The applicant became disabled while serving under the Civil Service Retirement System;

(6) The agency's inability to make reasonable accommodation to the employee's medical condition; and

(7) The absence of another available position, within the employing agency and commuting area, at the same grade or pay level and tenure, for which the employee is qualified for reassignment. For this part, placement in the agency is limited to those facilities in the commuting area that are serviced by the same appointing authority.

* * * * *

7. Subpart L of Part 831 is revised to read as follows:

Subpart L—Disability Retirement on Application by an Agency

Sec.

Authority: 5 U.S.C. 8347

Subpart L—Disability Retirement on Application by an Agency

§ 831.1201 Scope.

This subpart prescribes the procedures to be followed when an agency files an application for the employee's disability retirement in the course of removing an employee.

§ 831.1202 Definitions.

"Medical documentation," "documentation of a medical condition," and "review of medical documentation," have the same meaning given these terms in § 339.102 of this chapter. "Medical documentation" submitted under this subpart shall be submitted from a physician.

§ 831.1203 Basis for filing application.

(a) An agency shall file an application for disability retirement of an employee who has five years of civilian Federal service under the following conditions:

(1) The agency has issued a decision to remove the employee;

(2) The agency concludes, after its review of medical documentation, that cause for the unacceptable performance, conduct, or attendance is due to disease or injury;

(3) The employee is institutionalized, or based on the agency's review of medical and other information, it concludes that the employee is incapable of making a decision to file an application for disability retirement;

(4) The employee has no personal representative or guardian; and

(5) The employee has no immediate family member who is willing to file an application on his or her behalf.

(b) When an agency issues a decision to remove and the conditions described in paragraph (a) of this section have not been satisfied but the removal is based on reasons apparently caused by a medical condition, the agency shall advise the employee in writing of his or her possible eligibility for disability retirement.

§ 831.1204 Agency procedure.

(a) The agency shall inform the employee in writing at the same time it informs the employee of its removal decision, or any time before the separation is effected, that: (1) The agency is submitting a disability retirement application on the employee's behalf to OPM, (2) the employee may review any medical information in accordance with the criteria in § 294.401(b) of this chapter, and (3) the action does not affect the employee's right to submit a voluntary application

for disability retirement under § 831.502 of this part.

(b) When an agency submits an application for disability retirement to OPM under this subpart, it shall provide OPM with copies of the decision to remove, the medical documentation, and any other documents needed to show that the cause for removal is due to a medical condition. Following separation, the agency shall provide OPM a copy of the documentation of the separation.

§ 831.1205 Office of Personnel Management procedure.

(a) OPM shall not act on any application for disability retirement under this subpart until it receives the appropriate documentation of the separation. When OPM receives a complete application for disability retirement under this subpart, it shall notify the former employee that it has received the application, and that he or she may submit medical documentation. OPM shall determine entitlement to disability retirement under the provisions of § 831.502 of this part.

(b) OPM shall issue its decision in writing to the employee and to the employing agency. The decision shall include a statement of findings and conclusions, and an explanation of the right to request reconsideration under § 831.109 of this part.

§ 831.1206 Cancellation of retirement.

OPM shall cancel any disability retirement when a final decision of an administrative authority or court reverses the removal action and orders the reinstatement of an employee to the agency rolls.

[FR Doc. 84-745 Filed 1-10-84; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Part 1001

Employee Responsibilities and Conduct

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This document modifies existing internal OPM regulations by amending a regulation concerning the misuse of official information to make it clear that the regulation does not permit discipline by way of reprisal against legitimate "whistleblowers." A regulation prohibiting OPM employees from making public agency disagreements or criticism of OPM officials is removed; a restriction on contracting with Federal employees is substituted. Finally, certain procedural and editorial changes have been made to regulations on the reporting of employment and financial interests.

EFFECTIVE DATE: January 11, 1984.

FOR FURTHER INFORMATION CONTACT: Lew Fischer, Office of the General Counsel, (202) 632-5506.

SUPPLEMENTARY INFORMATION: On January 13, 1981, the Merit Systems Protection Board issued an order stating its intention to review on its own motion OPM regulations at 5 CFR 735.206 and 5 CFR 1001.735-208 to "consider whether these regulations allow or impermissibly encourage the commission of prohibited personnel practices with respect to employees who disclose information which they reasonably believe evidences a violation of law, mismanagement, waste of funds, abuse of authority, or a danger to the public health or safety." In response to that order, OPM submitted a motion for a stay of that review based opon, among other things, a proposed revision of OPM regulations. That motion was granted and the revision herein is, in part, in response to the Board's order. Implementation of OPM regulations is subject to 5 U.S.C. 1103(b) and 1105; specifically excluded from this process are regulations that apply solely to OPM or its employees. Likewise, the regulations of an agency that are solely internal in applicability are not subject to Executive Order 12291, Federal Regulation, or the Regulatory Flexibility Act.

List of Subjects in 5 CFR Part 1001

Conflict of interests, Government employees.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the United States Office of Personnel Management amends Part 1001 of Title 5 of the Code of Federal Regulations as follows:

PART 1001—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. Section 1001.735-205 is revised to read as follows:

§ 1001.735-205 Misuse of information.

(a) Except as provided in § 1001.735-203(b), an applicant or employee shall not, directly or indirectly, for the purpose of furthering a private interest, use or allow the use of official information which has not been made available to the general public and which has been obtained by such employee through, or in connection with, Government employment or application for Government employment.

(b) Nothing in this section shall permit the use of personnel actions against applicants or employees in reprisal for lawful disclosures of information made by such applicants or employees, to proper authorities, on the reasonable belief that the information thus disclosed evidences a violation of law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

2. Section 1001.735-208 is revised to read as follows:

§ 1001.735-208 Contracts between OPM and Government employees or former OPM employees.

(a) Contracts shall not knowingly be entered into between OPM and employees of the Government or business concerns or organizations which are substantially owned or controlled by Government employees, except for the most compelling reasons, such as cases where the needs of the Government cannot reasonably be otherwise supplied.

(b) Contracts shall not be entered into between OPM and former full-time, non-temporary OPM employees during the one year period following their termination from OPM employment, except where the participation of the former OPM employee is essential to obtaining the needed services.

(c) Exceptions under paragraphs (a) and (b) of this section shall be approved by the Associate Director, Administration Group, or his designee.

3. Section 1001.735-304 is revised to read as follows:

§ 1001.735-304 Applicability of other provisions.

Except for § 1001.735-208, the provisions of §§ 1001.735-206 through 1001.735-213 apply to special Government employees in the same manner as to employees.

4. Section 1001.735-401 is revised to read as follows:

§ 1001.735-401 Employees required to submit statements.

Employees shall submit statements of employment and financial interests in accordance with the criteria established in 5 CFR 735.403. An employee required to file a financial statement under the provisions of the "Ethics in Government Act of 1978" (Public Law 96-521) shall not file a statement under this Subpart.

5. Section 1001.735-402 is revised to read as follows:

§ 1001.735–402 Employee's complaint on filing requirement.

An employee who believes that his or her position has been improperly included as one requiring submission of a statement of employment and financial interests may obtain a review of that designation through the OPM internal grievance procedure.

6. Section 1001.735–403 is revised to read as follows:

§ 1001.735–403 Form of statements.

An employee required to submit a statement of employment and financial interests should submit that statement in the format prescribed by the Office of Personnel and EEO.

7. Section 1001.735–405 is revised to read as follows:

§ 1001.735–405 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement, in the format prescribed by the Office of Personnel of OPM, as of September 30 of each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions of section 208 of title 18, United States Code, or Subpart B of this Part.

8. Under § 1001.735–409, paragraphs (b) and (c) are removed; paragraph (d) is redesignated as (b) and is revised to read as follows:

§ 1001.735–409 Review of statements.

* * * * *

(b) When a statement submitted under this section indicates a conflict between the interests of an employee and the performance of services for the Government, and when the conflict or appearance of conflict cannot be resolved by the reviewing official, the information concerning the conflict shall be reported to the General Counsel of OPM. The employee concerned shall be given an opportunity to explain the conflict or appearance of conflict before remedial action is initiated.

9. Paragraph (b) of § 1001.735–412 is revised to read as follows: § 1001.735–412 Submission of statements by special Government employees.

(b) A special Government employee shall submit his statement of employment and financial interests in the format prescribed by the Office of Personnel and EEO of OPM. The statement shall be filed with the Assistant Director of OPM for Personnel, who shall review it for potential conflicts of interest before forwarding it to the Office of the General Counsel, where all such statements will be maintained. All such statements shall be accorded the confidentiality prescribed in § 1001.735–410.

* * * * *

Authority: Sec. 201, E.O. 11222.

[FR Doc. 84-744 Filed 1-10-84; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Canned Grapefruit and Orange for Salad

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule

SUMMARY: The purpose of this final rule is to revise the voluntary U.S. Standards for Grades of Canned Grapefruit and Orange for Salad. The final rule was developed by the United States Department of Agriculture (USDA) at the request of major segments of the citrus industry. This final rule revises the voluntary grade standards to: (1) Allow sliced oranges to be used in packing this product; and (2) replace dual grade nomenclature with single letter designations. Its effect will be to improve the grade standards and promote orderly and efficient marketing of grapefruit and orange for salad.

EFFECTIVE DATE: January 11, 1984.

FOR FURTHER INFORMATION CONTACT: Paul Jennings, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, Telephone (202) 447–6247.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because it reflects current marketing practices.

It is found that it is impracticable and contrary to the public interest to delay the effective date of the final rule in that: (1) Processing of the 1983 citrus crop has begun, and it is intended that this final rule be applicable to this crop; and (2) the major segments of the citrus industry have been apprised of this action and have requested that the changes incorporated in this revision be made effective as soon as possible. Therefore, this final rule is effective upon publication in the Federal Register (5 U.S.C. 533).

The currently effective standards for grades of canned grapefruit and orange for salad provide only for segmented fruit to be used in the product. This revision adds sliced oranges or a combination of segmented and sliced oranges, to segmented grapefruit as styles used in canned grapefruit and orange for salad for the purpose of describing product subject to grading. Sliced oranges are utilized in packing canned oranges, chilled oranges and chilled citrus salad.

Following the policy of making grade standards simpler to understand, the dual grade nomenclature is being replaced with single letter grades of "U.S. Grade A" and "U.S. Grade B."

On September 9, 1983, a proposed rule was published in the Federal Register (48 FR 40734). The comment filing period ended October 11, 1983. A comment was received from a citrus processor objecting to the proposed change. These objections were withdrawn by the processor at a later date. The Florida Citrus Processors Association, Florida Citrus Mutual, and the State of Florida, Department of Citrus all commented favorably and requested that the final rule be published as soon as practicable. After review of the comments and in order to promote orderly marketing of canned grapefruit and orange for salad, the USDA hereby revises the U.S. grade standards to: (1) Allow sliced oranges to be used in packing this product; and (2) replace dual grade nomenclature with single letter grade designations.

List of Subjects in 7 CFR Part 52

Fruit and vegetable, Food grades, Standards.

Accordingly, the United States Standards for Grades of Canned Grapefruit and Orange for Salad (7 CFR 52.1251–52.1264) are amended as follows:

PART 52—[AMENDED]

1. The Table of Contents of the Subpart is revised to read as follows:

Sec.
52.1251 Product description.
52.1252 Styles.
52.1253 Grades.
52.1254 Liquid media and Brix measurement.
52.1255 Fill of container.
52.1256 Minimum drained weight.
52.1257 Sample unit size.
52.1258 Determining the grade of a sample unit.
52.1259 Determining the rating for factors which are scored.
52.1260 Wholeness.
52.1261 Color.
52.1262 Defects.
52.1263 Character.
52.1264 Determining the grade of a lot.

2. Section 52.1251 is revised to read as follows:

§ 52.1251 Product description.

Canned grapefruit and orange for salad, commonly known as canned citrus salad, is prepared from sound, mature grapefruit (Citrus paradisi Macfadyen) and sound, mature oranges of the orange group (Citrus sinensis). The fruit ingredients have been properly washed, cored, with seeds and major portions of tough membrane removed. The grapefruit units are segmented and the orange units may be segmented or sliced. The product is packed with a suitable packing medium which may be water, fruit juice, nutritive carbohydrate sweeteners, artificial sweeteners, or any other safe and suitable ingredients permissible under the Federal Food, Drug, and Cosmetic Act. The product is sufficiently processed by heat to assure preservation in hermetically or aseptically sealed containers.

§ 52.1264 [Removed]

3. Section 52.1264 is removed.

§§ 52.1253–52.1264 [Redesignated from §§ 521252–52.1263]

4. Sections 52.1252 through 52.1263 are redesignated as §§ 52.1253 through 52.1264 respectively.

§ 52.1252 [Added]

5. A new § 52.1252 is added to read as follows:

§ 52.1252 Styles.

(a) Segmented.

(b) Mixed segmented and sliced.

§ 52.1253 [Amended]

6. Newly designated § 52.1253 is amended in paragraph (a) by removing the phrase "(or U.S. Fancy)" and in paragraph (b) by removing the phrase "(or U.S. Choice)".

§§ 52.1253, 52.1260, and 52.1263 [Amended]

7. Newly designated §§ 52.1253, 52.1260, and 52.1263 are amended by changing "segments" to "units" wherever it appears.

§§ 52.1260 and 52.1262 [Amended]

8. In newly designated §§ 52.1260 (a) introductory text, (a)(1); and (a)(2); and 52.1262 (a)(4) change the word "segment" to read "unit".

(Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624))

Done at Washington, D.C., on: January 5, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-665 Filed 1-10-84; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 212

[Docket No. R-0431]

Regulation L, Management Official Interlocks; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Correction.

SUMMARY: The Board is making a correction to a document on 12 CFR Part 212, Regulation L (Management Official Interlocks) published at 48 FR 57106 (December 28, 1983).

FOR FURTHER INFORMATION CONTACT: Melanie L. Fein, Senior Attorney, Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551; (202) 452–3594.

SUPPLEMENTARY INFORMATION: The authority citation is amended to read:

Authority: 12 U.S.C. 3201, *et seq.*; 5 U.S.C. 19.

Board of Governors of the Federal Reserve System January 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-676 Filed 1-10-84; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 572a

[No. 83-767]

Extension of the Voluntary Assisted-Merger Program

Dated: December 30, 1983.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has determined to extend operation of its Voluntary Assisted-Merger Program, which had been established on a test basis for six months ending December 31, 1983 to June 30, 1984. The Board's action is intended to extend the program for an additional six months in order to provide a better opportunity to use and study its benefits.

EFFECTIVE DATE: January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Judith Gunderson, Attorney, (202/377–6439), or Gregory B. Smith, Attorney, (202/377–6454), of the Office of General Counsel, or Alan Hawkins, Office of the Federal Savings and Loan Insurance Corporation (202/377–6114), Federal Home Loan Bank Board, 1700 "G" Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The Voluntary Assisted-Merger Program, Part 572a of the Rules and Regulations for the Federal Savings and Loan Insurance Corporation ("Insurance Regulations"), 12 CFR Part 572a, which was promulgated by the Board on June 9, 1983, Board Resolution No. 83-333, delegates to the Board's Principal Supervisory Agents authority to negotiate and approve certain mergers and acquisitions of eligible insured-institutions, as designated by the Board, and to authorize financial assistance from the FSLIC to facilitate such mergers and acquisitions. The authority delegated covers mergers and acquisitions assisted by the FSLIC and voluntarily entered into by the affected institutions. The Board's action was intended to permit earlier solution of relatively simple situations, to reduce the time and cost required to complete those solutions, and to encourage innovative approaches to the financial problems of insured institutions. However, the Board only viewed the program as a temporary measure necessitated by the exigencies of the adverse operating conditions, caused by high interest rates, experienced by the

thrift industry since 1980. Therefore, the Board established the program with a termination date of December 31, 1983. The Board has now determined that adverse operating conditions in the thrift industry continue to necessitate use of the program and that, therefore, the program should be continued for an additional six months.

List of Subjects in 12 CFR Part 572a

Savings and Loan Association, Voluntary Assisted Merger Program.

The Board finds that observance of the public notice and comment periods, pursuant to 5 U.S.C. 553(b) and 12 CFR 508.12, and delay of the effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14, are unnecessary and inappropriate in this case, because the regulation pertains to internal Board procedures and practices whereby currently exercised Board activities are delegated to its Principal Supervisory Agents.

However, the Board will entertain comments regarding this program in determining whether any changes are appropriate. Comments should be sent to the Director, Information Services, Office of Secretariat, Federal Home Loan Bank Board, 1700 "G" Street, N.W., Washington, D.C. 20552. Comments will be available for public inspection at the same address.

Accordingly, the Board hereby amends Part 572a of Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

Revise paragraph (a) of § 572a.6, as follows:

Regulations of the Federal Savings and Loan Insurance Corporation

PART 572a—OPERATIONS

§ 572a.6 Sunset.

(a) The Voluntary Assisted-Merger Program shall terminate on June 30, 1984, unless extended by regulatory amendment by the Corporation.

* * * * *

Authority: Secs. 401, 402, 403, 405, 406, and 407, 48 Stat. 1255, 1256, 1257, 1259 and 1260, as amended (12 U.S.C. 1724, 1725, 1726, 1728, 1729 and 1730); secs. 2 and 5, 28 Stat. 128 and 132, as amended (12 U.S.C. 1462 and 1464); Reorg. Plan No. 3 of 1947, CFR 1943–1948 Comp., p. 1071.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-700 Filed 1-10-84; 8:45 am]

BILLING CODE 6720-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 21

Special Calls for Futures and Options Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is amending Rule 21.02, 17 CFR 21.02, to require that for futures and option accounts future commission merchants, members of contract markets, introducing brokers, foreign brokers, and for options, contract markets, provide to the Commission upon special call the telephone numbers of persons for whom they carry accounts. In order to provide the Commission with a sampling frame for the conduct of its market-wide studies, the Commission is also adopting a new § 21.02a which authorizes the Commission to issue abbreviated special calls to futures commission merchants and other similar reporting entities. These abbreviated calls require the response to be in machine readable form. The rule as adopted includes an exemptive provision for those reporting entities which are unable to meet the technological requirements of the rule.

DATE: These rules shall be effective February 10, 1984.

ADDRESS: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economics and Education at the above address. Telephone: (202) 254–6990.

SUPPLEMENTARY INFORMATION:

I. Background

On July 14, 1983, the Commission published for public comment proposed amendments to Rule 21.02 (48 FR 32188). These proposed amendments would have provided for an alternative to the manual tabulation of information as required by the existing rule. The proposed amendments to Rule 21.02 would have required that information which is carried by all future commission merchants on their data processing systems be provided in an automated manner to the Commission. This information would have provided a sampling frame from which the Comission could request additional information for a selected market sample. In addition, in order to permit the Commission readily to conduct in-depth follow-up surveys, the Commission proposed to amend Rule 21.02 to require that traders' telephone numbers be submitted upon special call.

The Commission provided for a forty-five day comment period on the proposed rules. In response, the Commission received comments from nine commentators. These included comments from five commodity exchanges, three futures commission merchants, and one industry association. In general, those commodity exchanges commenting on the proposed rule were opposed to its requirements, particularly n as they applied to the exchanges. The exchanges contended that they should have no reporting requirements for special calls under either existing Rule 21.02 or under other similar regulations.

Some commentators representing the futures commission merchant community, however, supported the concept embodied in the proposed rule. Indeed, one industry association which by its estimate represents those futures commission merchants handling approximately eighty percent of all futures contracts traded on U.S. exchanges,

lauded the Commission's concept * * * and is of the view that collecting research data by modern sampling techniques would greatly facilitate the Commission's study of selected futures and options markets without placing undue burdens on the futures industry.

In this spirit, this commentator and other commentators representing futures commission merchants offered several technical suggestions which the Commission by-and-large has incorporated into the final rule.

The Commission is herein adopting an amendment to Rule 21.02 requiring that upon special call, in addition to the other information presently requested, the telephone numbers of traders as indicated on the records of the reporting entities be provided to the Commission. In addition, the Commission is adopting a separate regulation, new Rule 21.02a, which establishes an abbreviated special call procedure. These abbreviated special calls are intended to provide the Commission with a sampling frame for the conduct of its market-wide studies. Use of the sampling technique will permit the Commission to obtain more in-depth information about individuals using the markets while at the same time reducing the overall burden on reporting entities.

Moreover, the abbreviated special call requires that responses be in machine readable form. This will permit the Commission to draw a statistically valid

sample for its survey without devoting the resources necessary to tabulate manually a total enumeration of the market. Those resources will instead be focused on obtaining complete data for only the selected survey sample. The benefits from automating the initial request for information should also similarly accrue to the vast majority of reporting entities by reducing the amount of resources necessary to provide the Commission with statistically valid information. As in the proposed rule, an exemption provision has been included for those reporting entities who are unable to comply with the technological requirements of the rule.

II. Amendment of Rule 21.02

The Commission has determined to adopt the amendment to Rule 21.02, as proposed, requiring that the telephone numbers of traders be provided. Several commentators suggested that telephone numbers be reported to the Commission as carried on the existing business records of the future commission merchants. In this regard, they pointed out that not all customers provide telephone numbers to their futures commission merchants. Some customers may instead provide telex numbers, direct telephone lines or arrange for other means of communication.

The Commission cannot limit the reporting entities' responsibility for complying with a special call to merely providing information as it appears on its business records. Therefore, it may be necessary for the reporting entity to go beyond its records in order to comply. However, for the purposes of responding to a special call in the context of a market survey, it may be unnecessary, in certain limited instances, to require reporting entities to go beyond the information concerning customer telephone numbers carried on the reporting entities' ordinary business records. Accordingly, the Commission intends to treat responses to a market survey special call furnishing telephone numbers as being in compliance where such responses are prepared from, and accurately reflect, the ordinary business records of the reporting entities.[1]

[1] One commentator suggested that unpublished telephone numbers should not be required to be reported to the Commission. The Commission cannot agree with this suggestion. Where a commodity trader has provided a telephone number to a futures commission merchant, whether published or unpublished, there can be no objection to the futures commission merchant providing that number to the Commission for statutorily mandated governmental functions. In this connection, it should be noted that telephone numbers typically will not be required to be reported in a total market enumeration survey, but rather would be required for only the selected sample. Thus, the number of unpublished telephone numbers which the Commission collects should be relatively small. Moreover, an individual's telephone number, whether published or unpublished, when located on a list of persons holding open positions in a futures or option market at the levels specified in a special call, is confidential under the provisions of Section 8 of the Commodity Exchange Act and will be treated by the Commission with the same confidence as is any other information which could link individuals to their specific business transactions or market positions.

III. Role of the Contract Markets

The various contract markets took general exception to the Commission's proposal. They objected in principle to the existing special call reporting requirements placed on the contract markets. They generally argued that the data required for the surveys of option markets are typically in the possession of futures commission merchants or exchange clearing members.[2] Accordingly, the contract markets objected to playing any role in the gathering and tabulation of survey information. They maintained that because the survey information is typically located with a different primary source, they should be spared the expense and inconvenience of playing an active role in surveying their markets.

Consistent with this argument, one commentator requested that existing Commission Rules 21.02 and 16.05, 17 CFR 21.02 and 16.05, be amended to remove from contract markets their existing special call obligations with respect to option contract markets. This commentator stated:

> In the course of assessing the implication * * * of the Commission's current proposals under Reg. § 21.02, it became clear that the flaws that are articulated in these comments are not confined to the pending matter but extend to existing Reg. § 21.02 as well as Reg. § 16.05 * * *.

In adopting final rules permitting the trading of options on commodity futures contracts, the Commission placed with the contract markets the responsibility for surveying their markets. Commission Rule 16.05 therefore specifically provides that contract markets designated for the trading of commodity options shall conduct market surveys upon call by the Commission and shall provide the indicated information on individual option traders to the Commission in the manner specified. In adopting this rule, the Commission noted that it:

> wishes to emphasize that the requirement that the contract markets collect large trader data is solely for the purpose of obtaining surveillance information, which, by its nature, is not suitable for determining certain market characteristics. This separate requirement of market surveys is therefore necessary to properly evaluate the option pilot program and the Commission has determined to adopt, as § 16.05, a requirement that the exchanges collect information and provide it to the Commission.
>
> 46 FR 54500, 54513 (November 3, 1981).

This provision is consistent with the overall thrust of the Commission's option program to regulate these additional markets with its existing available resources. As the Commission stated in connection with a related provision:

> To the extent practicable, the Commission intends to assume an oversight role in the option pilot program and to allow designated contract markets to assume primary responsibility in various areas, including market surveillance * * *. The Commission further believes there is no compelling reason to justify the expenditure of public funds to collect and process this data and that the costs of operating the system should be borne more directly by the principal beneficiaries of self-regulation.
>
> 46 FR 54513.

As the exchange commentators observed, Rules 16.05 and 21.02 in effect provide that the exchanges act as intermediaries between the futures commission merchants who possess the raw data and the Commission. This role is consistent with the Commission's intent that the self-regulators bear the regulatory burdens of the option program.[3] Accordingly, the Commission cannot agree with those exchange commentators who have petitioned to repeal the requirements in Rules 16.05 and 21.02 concerning exchange responsibility for responding to special calls on option markets. In this respect, the Commission reiterates its intention to require the exchanges to make three surveys of their option markets during the course of the pilot program.[4] *Compare*, 46 FR 54513.

[2] Under Commission regulation 16.02 contract markets are required to obtain reports from futures commission merchants or clearing members concerning the positions of reportable option traders. However, that information is not typically required for the vast number of option traders who hold positions below reportable levels.

[3] In this connection, one contract market suggested that the appropriate self-regulatory organization to conduct the surveys was the NFA. It suggested that the NFA would have better access to its members' records than would the exchanges. On the other hand, one FCM commentator suggested that the burden of reporting should be on the exchanges rather than on the FCMs. The Commission believed at the time it adopted the option regulations that the contract markets choosing to become designated option markets were the appropriate self-regulatory organizations to shoulder this burden. Nothing in the intervening period has changed that view.

[4] In the regulations establishing the pilot option program the Commission suggested that three

Continued

IV. Abbreviated Special Call

In addition to their general opposition to assuming reporting responsibilities for special call surveys, the contract markets were unanimously opposed to the proposed abbreviated procedure. Several exchange commentators specifically alluded to the relative burden of providing responses in machine readable form. They observed that the Commission must have overlooked the differing positions of exchanges and futures commission merchants because the discussion of the proposal in the Federal Register notice focused on the data processing systems of the futures commission merchants.

The Commission did not intend to suggest that it had overlooked the position or responsibilities of the contract market with respect to reporting in option contract markets. Rather, the proposal was based on the effect such a regulation would have on those who ultimately must furnish the information, the futures commission merchants and member firms. Accordingly, the Commission's failure to discuss specifically the exchanges' role was not intended to treat lightly their responsibilities, but rather was an effort to design a procedure which could be successfully implemented by the vast majority of reporting entities and to recognize that the ultimate burden of the regulation falls on those who actually possess the information.

In light of the comments received voicing concern over the application of the abbreviated special call to the exchanges, the Commission has determined not to include contract markets under the provisions of the abbreviated special call. Instead, the abbreviated procedure will be promulgated as a separate Commission rule, Rule 21.02a. Rule 21.02a is applicable only to futures commission merchants, members of contract markets, and foreign brokers. As discussed above, however, the Commission has determined not to revise existing Rules 21.02 or 16.05 to exempt contract markets from the responsibility for reporting for their option markets.

V. Rule 21.02a

In contrast to the exchanges, futures commission merchants had more specific, technical concerns. For example, the industry association commentator, representing a group of ninety-nine futures commission merchants, approved of the concept of the abbreviated special call but suggested technical amendments clarifying and simplifying certain aspects of the rule. Among these suggestions, the industry association advocated incorporating the format and coding structure into the rule. It reasoned that any changes in the reporting format from one special call to another would take considerable time and effort, partially defeating the economies to be gained from the rule. The Commission agrees with this observation and therefore has incorporated the format and coding structure into the provisions of the rule.

In this regard, in addition to including the coding and format structure in the rule, the Commission has also amended certain items in the format structure from that which was published in the proposal. In particular, the revised format structure provides that the customer's name and address be in a free format. The Commission has been assured by several commentators, including the industry association, that this will more closely align to common industry practice. Further, the Commission, as suggested, has provided that the reporting coding be the same as is used in the Commission's current Series 01 Reports. In addition, the Commission is specifying in the rule the medium for reporting. In this regard, the Commission has not made specific provision for reporting by means of other magnetic media as suggested by the comments. That provision has been incorporated into the proposed exemption provision as discussed below.

The industry association also commented that the date for reporting of information be prospective, that a period of at least thirty days advance notice be given before the information must be prepared, and that a period of at least ten days be provided before responses must be returned. The Commission has not specifically provided for such time periods in its rules. Such time periods may prove unnecessarily long after experience with the procedures has been gained.

Nevertheless, the Commission is mindful that sufficient time must be provided to reporting entities in order for them to make required computer programming changes and, where relevant, to submit petitions for exemptions to the Commission and to permit the Commission sufficient time to consider those petitions. Moreover, although the Commission has not adopted in the regulation a specific time period after the call date by which the response must be submitted, the Commission has without exception in the past provided a reasonable period to the reporting entities to prepare and submit their responses. The Commission intends to continue to follow these policies of providing adequte time both before and after the special call date but believes that flexibility as to the timing of future calls is needed.

The industry association also suggested in its comments that for purposes of the abbreviated call the information required only be that which actually appears on the reporting entities' records for that business day. A reporting entity, therefore, would be deemed in compliance even if the information provided, that which is routinely carried on its books, did not exactly correspond with the information required by the regulation.

Although the purpose of automating the abbreviated special call procedure is to make use of existing, automated data as much as possible, and thereby to reduce the costs of reporting, the Commission cannot permit reporting entities to deviate substantially from the information and format required. Otherwise, the call may result in data which is unacceptable or unusable for sampling purposes. For example, the address of account holders may be relevant where the sample is to be stratified by geographical location. Moreover, non-compliance by one or more of the reporting entities which invalidates their responses may unacceptably skew the overall statistical results. Accordingly, the Commission cannot accept as complying with the special call substantial substitutions in the required information.

Where a futures commission merchant does not carry the required information in its computer systems or cannot provide it in a form which permits it substantially to comply with the reporting requirements, however, a petition for exemption may be appropriate. For example, where a futures commission merchant's entire automated record system lacks one of the required elements which can only be

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market wide surveys would be required by the Commission. 46 FR 54513. The Commission has recently issued a special call for various contract markets, including option markets, in connection with the study required by Section 23 of the Act. Because this call requested information on both futures and options, for purposes of efficiency, it was issued pursuant to Rule 21.02 directly to futures commission merchants and clearing members, but not contract markets. The Commission intends, however, when conducting future studies of option markets, to issue special calls on the option contract markets. In consideration of those entities who actually possess the required information, however, the Commission will accept the response already received for information concerning those option contract markets included in the recent special call as fulfilling the first required survey for those particular option markets.

cross-referenced manually, the reporting entity may be able to demonstrate its technological inability to meet the abbreviated special call provision. Where, however, the business records of the reporting entity generally provide the information required in the special call, and only occasionally is the required information omitted, and where such minor differences do not affect the overall validity of the sampling process, such responses may be deemed to be in substantial compliance with the regulation.

Finally, the industry association noted that reporting entities should be specifically authorized to permit service bureaus to report such information on their behalf to the Commission. The Commission recognized in its discussion of the proposed rules that many of the reporting entities may contract with third parties for the performance of their automatic data processing. The Commission recognizes that third party service contractors may be the actual firms reporting to the Commission on behalf of the reporting entities. Accordingly, the Commission does not believe that specific provision in the rule permitting this practice is necessary. The Commission notes, however, that although private contractual arrangements may shift the actual reporting to a third party, the legal responsibility for compliance rests with the reporting entity.

VI. Exemption Provision

The Commission has retained an exemptive provision from the proposed rule. Several smaller reporting entities noted that their automatic data processing hardware was incompatible with the Commission's. The Commission reiterates that it does not expect reporting entities to acquire new hardware nor to completely revise an existing data-base in order to comply with this regulation. Rather, the intent of the regulation is to reduce the existing burden of manual tabulation of responses to special calls by substituting, where technically feasible, procedures which use existing automated data processing systems.

In this respect, several commentators questioned whether sufficient uniformity of automatic data processing equipment exists within the industry to permit this objective to be obtained. From the comments received by the Commission, it appears that a very high percentage of the recordkeeping of the futures industry is carried on systems which are compatible with the format and coding requirements being promulgated by the Commission in this rule. Nevertheless, where a reporting entity is able to report in machine readable form but is not able to meet the medium, format or coding requirements of the rule, it may file a petition for exemption from specific provisions of the rule. In such cases, the Director of the Division of Economics and Education will consider alternative media, format or coding requirements.

In order to facilitate and expedite decisions on petitions for exemption, and in light of the technical nature of those decisions, the Commission has provided in the final rule for the Director of the Division of Economics and Education to make those determinations. Under the rule as herein adopted, the Director of the Division of Economics and Education has the discretion to permit a response in a machine readable form that does not comply with the specifications of the rule, or to relieve entirely the reporting entity from the requirement of machine readable reporting by providing that the response be filed as if the special call were issued under Section 21.02. In light of these facts, the Commission is confident that its intent in adopting this rule can be achieved while at the same time not increasing costs to those reporting entities which are currently unable to meet the technical requirements for compliance.

VII. Related Issues

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in adopting rules, consider their impact on small businesses. Analysis of the final rule amendments to Section 21.02 are not required, however, since the Commission has previously determined that the reporting entities, such as future commission merchants and contract markets, are not "small entities" for purposes of the RFA. 47 FR 18618–18621 (April 30, 1982). Accordingly, pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that these rules will not have a significant economic impact on a substantial number of small entities.[5]

B. Paperwork Reduction Act

This rule reduces an existing paperwork requirement by amending an existing rule which already has been assigned an Office of Management and Budget ("OMB") control number. The Commission assumes that the resulting new and amended rules will be assigned the same OMB control number. Accordingly, the Commission has submitted to the Director of the Office of Management and Budget pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) an explanation and details of the information collection required under this rule. Commission Rule 21.02 has previously been issued a control number pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The amendment of that rule, new Rule 21.02a, being adopted herein serves in effect to reduce materially the existing paperwork requirements.

Several commentators questioned the Commission's filing under the Paperwork Reduction Act in connection with the proposed rule. These commentators noted that the Commission in its filing under Rule 21.02 referred to the paperwork requirements of futures commission merchants and foreign brokers, but did not refer to the reporting burden under the proposed rule on option contract markets. In this respect the commentators noted that the filings by the Commission under OMB No. 3038–0017:

> contain literally nothing to support imposing information collection burdens on contract markets and, in fact, fail even to identify the contract markets as affected parties.

The Commission is aware that its filings under OMB No. 3038–0017 do not specifically refer to the obligations of contract markets to respond to market-wide special calls. However, when the Commission enacted the pilot program, OMB assigned control number 3038–0007 to all regulations enacted or amended by that program, including Rules 16.05 and 21.02. 46 FR 54514, 54515. *See also*, Display of Office of Management and Budget (OMB) Control Numbers for Reporting and Recordkeeping Requirements. 46 FR 63035, 63036 (December 30, 1981).

The Office of Management and Budget has been notified by the Commission of the adoption of this rule and a copy of this Federal Register notice has been provided to that agency.

List of Subjects in 17 CFR Part 21

Special calls for information, Futures commission merchants, Records and recordkeeping requirements, Machine readable.

In consideration of the foregoing and pursuant to the authority contained in

[5] While analysis under the RFA is not required, the Commission observes that the amendments are intended to streamline existing reporting requirements and to reduce existing paperwork burdens. It should also be noted that the rule provides an exemptive provision for any firm which is unable technologically to comply with the requirements of the rule. This exemption should provide relief to any reporting entity which fails to possess the prerequisite technical capability for compliance.

the Commodity Exchange Act and in particular, Sections 4c, 4f, 4g, 4i, 5(b), and 8a(5) of the Act, 7 U.S.C. 6c, 6f, 6g, 6i, 7(b) and 12a(5) (1982), the Commission hereby amends Chapter 1 of Title 17 of the Code of Federal Regulations by amending § 21.02 and by adding § 21.02a as follows:

PART 21—[AMENDED]

1. Section 21.02 is amended by revising the section heading and paragraph (a) as follows:

§ 21.02 Special calls for information.

* * * * *

(a) The name, address, and telephone number of the person for whom each account is carried;

* * * * *

2. New § 21.02a is added as follows:

§ 21.02a Special Calls for Information—Sample Surveys.

(a) Upon special call by the Commission for information relating to futures and/or option positions held on the dates specified in the call, each futures commission merchant, member of a contract market and foreign broker shall furnish to the Commission in accordance with paragraph (b) below the following information concerning accounts of traders owning or controlling such futures and/or option position as may be specified in the call:

(1) Account number;

(2) The name and address of the person for whom each account is carried; and

(3) The number of open futures and/or options contracts carried in each account as specified in the call.

(b) Except as provided in paragraph (c), the information shall be furnished in the following form and manner:

(1) *Reporting Medium.* Except as otherwise specifically approved by the Commission, information shall be provided on nonlabeled, unblocked nine track, 1600 BPI tapes with EBCDIC encoded card images.

(2) *File Layout.* All required machine records shall be submitted together in a single file. Each record will be 80 characters long with a record type indentifier in the first four positions and a record sequence indentifier in the last eight positions. Specific record formats are a set of COBOL language record descriptions. Four records are defined as follows:

(i) Type 400A records are an identification record used to pass data specifying the firm that is reporting. One 400A record should be included in the file.

(ii) Type 410B and 411C records are account identification records. Type 410B records are used to furnish account numbers. A series of type 411C records are used to transmit the name and address of the accounts. A series of 411C records should follow each 410B record.

(iii) Type 520E records are open position records. A series of 520E records should follow the last 411C record for each account.

(3) The required records are as follows:

```
01 0-T-400A.
   05 0-T-REPORT TYPE—PIC X (4)
      Value 400A.
   05 0-T-REPORT DATE—PIC X (6).
   05 0-T-REPORTING-FIRM-NAME—
      PIC X (55).
   05 FILLER—PIC X (7).
   05 0-T-SEQUENCE—PIC 9 (8).
01 0-T-410B.
   05 0-T-RECORD-TYPE—PIC X (4)
      Value 410B.
   05 0-T-ACCOUNT-NUMBER—PIC X
      (48).
   05 FILLER—PIC X (20).
   05 0-T-SEQUENCE—PIC 9 (8).
01 0-T-411C.
   05 0-T-RECORD-TYPE—PIC X (4)
      Value 411C.
   05 0-T-ACCOUNT-NAME-STREET-
      ADDRESS—PIC X (68).
   05 0-T-SEQUENCE—PIC 9 (8).
01 0 T-520E.
   05 0-T-RECORD-TYPE—PIC X (4)
      Value 520E.
   05 0-T-COMMODITY ID—PIC X (6).
   05 0-T-DELIVERY-OR-
      EXPIRATION-MONTH—PIC X (4).
   05 0-T-PUT OR CALL OPTION—PIC
      X (1).
   05 0-T-STRIKE-PRICE—PIC 9 (8).
   05 0-T-OPEN-LONG-POSITION—
      PIC 9 (8).
   05 0-T-OPEN-LONG-POSITION—
      PIC 9 (8).
   05 FILLER—PIC X (33).
   05 0-T-SEQUENCE—PIC 9 (8).
```

(4) *Field Definitions.* Field definitions for each record are as follows:

(i) *Record Type Identifier.* Unique identifier used by CFTC to transmit the format and implied meaning of data in a record. Valid values are 400A, 410B, 411C, and 520E.

(ii) *Report Date.* This is the date specified in the call for which the futures commisssion merchant or member provides position information. Dates should be encoded as six numeric characters—YYMMDD where YY is the last 2 digits of the year, MM is the month, and DD is the day of the month coded with a leading 0 for months and days 1–9.

(iii) *Reporting Firm Name.* The name of the firm which must respond to the Commission's call. The name of the firm is left justified in the field.

(iv) *Account Number.* A unique identifier for each account reported to the Commission under the 21.2(a) call. This can be any sequence of alphanumeric characters not to exceed 48 characters which are left justified in the field.

(v) *Name and Address.* The name and address of the person (individual or firm) for whom the account is carried. No specific format is required. Information is encoded in columns 5 through 72 on the 411C records. One 411C record corresponds to one line of characters used by respondents to maintain customer name and address on their system. There is no limit on the number of 411C records which can be used to transmit the information.

(vi) *Commodity ID.* A 6-digit numeric sequence uniquely identifying a contract traded on a particular exchange. The 6-digit numbers will be supplied by the Commission in the special call.

(vii) *Year and Month.* The year and month of delivery of the commodity specified in the futures contract, encoded as for characters YYMM. YY is the last two digits of the year and MM is the month, with a leading 0 for months 1–9.

If options information is being transmitted, this corresponds to the delivery month and year of the future upon which the option is traded or, in the case of options on physicals, the options expiration month and year.

(viii) *Put or Call Identifier.* If the 520E record is used to transmit futures data, this field is blank. For put options, encode this field with a "P," for call options a "C".

(ix) *Strike Price.* For futures information, this field is blank. For options, the first position is a decimal indicator (D) and in the second through eighth positions the integer strike price (IIIIIII). The value of the option strike price is computed IIIIIII*EXP10[−D). Thus, 30004375 is interpreted as 4375*EXP10[−3)=4.375=4⅜.

(x) *Open Long (Short) Positions.* Total number of long (short) contracts in the commodity specified in the call that open on the firm's books for a particular account as of the end of the trading day specified in the call. The field should be zero filled with right justified integers from 0 to 9999999.

(c) Response to special calls made pursuant to this section may be satisfied by responding as if the special call were issued under § 21.02 of this Chapter, or in machine-readable form in a manner other than that specified in paragraph (b), in the discretion of the Director of

Economics and Education, upon a showing that the futures commission merchant, member of a contract market, or foreign broker is not able technologically to provide the information in the form required by this section. Petitions for exemption under this paragraph must be filed sufficiently in advance of the date specified in the special call to provide the Director with a period for consideration of the petition which is reasonable under the circumstances.

Issued in Washington, D.C., on January 6, 1984, by the Commission.

Jane K. Stuckey,

Secretary to the Commission.

[FR Doc. 84-726 Filed 1-10-84; 8:45]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income; Burial Spaces and Certain Funds Set Aside for Burial Expenses

Correction

In FR Doc. 83-34360, beginning on page 57125, in the issue of Wednesday, December 28, 1983, in the second column, in the "EFFECTIVE DATE" paragraph, in the second line, the date should read "December 28, 1983".

BILLING CODE 1505-01-M

Food and Drug Administration

21 CFR Part 546

Tetracycline Antibiotic Drugs for Animal Use; Tetracycline Boluses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by American Cyanamid Co. proposing that the marketing status of its tetracycline hydrochloride (TCHCl) calf bolus be changed from use by or on the order of a licensed veterinarian to over-the-counter (OTC) use.

EFFECTIVE DATE: January 11, 1984.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Bureau of Veterinary Medicine (HFV-133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Berdan Ave., Wayne, NJ 07470, filed a supplement to its approval NADA 65-270 proposing OTC use of Polyotic® Tetracycline Hydrochloride Oblets®. The oblets (boluses) contain 500 milligrams of TCHCl each and are administered to calves for control and treatment of bacterial enteritis (scours) caused by *E. coli* and bacterial pneumonia caused by *Pasteurella* spp., *Hemophilus* spp., and *Klebsiella* spp. The supplement is approved and the regulations are amended to reflect the approval.

This is a Category II supplement (42 FR 64367; December 23, 1977) involving a change in marketing status from prescription to OTC for the specified indications. Because tetracycline (oxytetracycline, chlortetracycline, and tetracycline) calf boluses are readily available OTC, the use of and exposure to residues of, tetracycline should not be greatly affected. Therefore, a reevaluation of underlying safety and effectiveness data was not required. The basis of approval of this supplement is discussed in the Federal Register of May 11, 1982 (47 FR 20111).

Approval of this supplement is an administrative action that did not require generation of new effectivenss or safety data. Therefore, a freedom of information summary (pursuant to 21 CFR 514.11(e)(2)(ii)) is not required for this action.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a signficant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 546

Animal drugs, Antibiotics, Tetracycline.

PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i) and (n), 82 Stat. 347, 350-351 (21 U.S.C. 360b(i) and (n))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 546.180c *Tetracycline boluses* is amended in paragraph (c)(6)(i)(*b*) by removing the last phrase "Federal law restricts this drug to use by or on the order of a licensed veterinarian." and by removing the semicolon after the word "tetracycline," and inserting in its place a period.

Effective date. January 11, 1984.

(Sec. 512(i) and (n), 82 Stat. 347, 350-351 (21 U.S.C. 360b(i) and (n)))

Dated: January 4, 1984.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 84-690 Filed 1-10-84; 8:45 am]

BILLING CODE 4160-01-M

POSTAL SERVICE

39 CFR Part 10

International Express Mail Service to Belgium

AGENCY: Postal Service.

ACTION: Final action on International Express Mail Service to Belgium.

SUMMARY: Pursuant to an agreement with the postal administration of Belgium, the Postal Service intends to begin International Express Mail On-Demand Service with Belgium at postage rates indicated in the table below. Service is scheduled to begin on February 11, 1984.

EFFECTIVE DATE: February 11, 1984.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn, (202) 245-4414.

SUPPLEMENTARY INFORMATION: By a notice published in the Federal Register on December 7, 1983 (48 FR 54831), the Postal Service announced that it was proposing to begin International Express Mail On-Demand Service to Belgium. Comments were invited on a published rate table, which is a proposed amendment to the International Mail Manual (incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1), and which is to become effective on the date service begins. No comments were received.

Accordingly, the Postal Service states that it intends to begin International Express Mail On-Demand Service with Belgium on February 11, 1984 at the rates indicated in the table below.

List of Subjects in 39 CFR Part 10

Postal Service, Foreign relations.

BELGIUM—INTERNATIONAL EXPRESS MAIL

[On demand service [1]]

Up to and including Pounds	Rate	Up to and including Pounds	Rate
1	$20.00	18	$92.90
2	23.70	19	86.60
3	27.40	20	90.30
4	31.10	21	94.00
5	34.80	22	97.70
6	38.50	23	101.40

BELGIUM—INTERNATIONAL EXPRESS MAIL—Continued

[On demand service [1]]

Up to and including		Up to and including	
Pounds	Rate	Pounds	Rate
7	42.20	24	105.10
8	45.90	25	108.80
9	49.60	26	112.50
10	53.30	27	116.20
11	57.00	28	119.90
12	60.70	29	123.60
13	64.40	30	127.30
14	68.10	31	131.00
15	71.80	32	134.70
16	75.50	33	138.40
17	79.20		

[1] Pickup is available under a Service Agreement for an added charge of $5.60 for each pickup stop, regardless of the number of pieces picked up. Domestic and International Express Mail picked up together under the same Service Agreement incurs only one pickup charge.

A transmittal letter making these changes in the pages of the International Mail Manual will be published in the Federal Register as provided in 39 CFR 10.3 and will be transmitted to subscribers automatically.

(39 U.S.C. 401, 404, 407)

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 84-699 Filed 1-10-84; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL 2504-7; KY-019]

Approval and Promulgation of Implementation Plans; Kentucky: Approval of Revisions to Appendix N of the Kentucky State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves revisions to Appendix N of the Kentucky State Implementation Plan (SIP). Appendix N consists of regulations developed by the Air Pollution Control District of Jefferson County (the District), and applies only in Jefferson County, Kentucky; they are implemented by the District. EPA approval of the regulations enables the District to retain authority for all subject activities in Jefferson County.

EFFECTIVE DATE: This action will be effective March 12, 1984, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Melvin Russell of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the material submitted by Kentucky may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460;

Library, Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20005;

Air Management Branch, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365;

Kentucky Department for Environmental Protection, 18 Reilly Road, Bldg. 2, Fort Boone Plaza, Frankfort, Kentucky 40601; and

Air Pollution Control, District of Jefferson County, 914 East Broadway, Louisville, Kentucky 40204

FOR FURTHER INFORMATION CONTACT: Melvin Russell of the EPA Region IV Air Management Branch at the above address, telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: The Air Pollution Control District of Jefferson County (the District) develops and implements air quality regulations in Jefferson County, Kentucky. The District's regulations are at least as stringent as compatible Kentucky regulations. The District's regulations are incorporated by the State as part of the Kentucky SIP; in this manner, the State has the authority to implement the regulations in Jefferson County if the District cannot.

The SIP revisions affected by today's approval were adopted by the Air Pollution Control Board of Jefferson County on April 21, 1982, and submitted to EPA by Kentucky on July 19, 1982. The July 19, 1982, submittal consisted of only the revisions to the regulations. Because the regulations were numerous, and the revisions diverse, EPA requested the complete text of each revised regulation to ensure that the regulations for the District and the State, as reviewed and approved by EPA, were identical. Kentucky submitted the complete text of each revised regulation on March 21, 1983.

Discussion

The District has revised its regulations as follows:

I. The following volatile organic compound (VOC) regulations have been revised to have an applicability date of May 20, 1981.

A. Regulation 6.23 Standard of Performance for Existing Dry Cleaning Facilities

B. Regulation 6.29 Standard of Performance for Existing Graphic Arts Facilities Using Rotogravure and Flexography

C. Regulation 6.30 Standard of Performance for Existing Factory Surface Coating Operations of Flat Wood Paneling

D. Regulation 6.31 Standard of Performance for Existing Miscellaneous Metal Parts and Products Surface Coating Operations

E. Regulation 6.32 Standard of Performance for Leaks From Existing Petroleum Refinery Equipment

F. Regulation 6.33 Standard of Performance for Existing Synthesized Pharmaceutical Product Manufacturing Operations

G. Regulation 6.34 Standard of Performance for Existing Pneumatic Rubber Tire Manufacturing Plants

H. Regulation 7.23 Standards of Performance for New Perchloroethylene Dry Cleaning Systems

I. Regulation 7.56 Leaks From New Petroleum Refinery Equipment

J. Regulation 7.57 New Graphic Arts Facilities Using Rotogravure and Flexography

K. Regulation 7.58 Standards of Performance for New Factory Surface Coating Operations of Flat Wood Paneling

L. Regulation 7.59 Standards of Performance for New Miscellaneous Metal Parts and Products Surface Coating Operations

M. Regulation 7.60 Standards of Performance for New Synthesized Pharmaceutical Product Manufacturing Operations

N. Regulation 7.61 Standards of Performance for New Pneumatic Rubber Tire Manufacturing Plants

II. Regulation 6.36 Standard of Performance for Existing Metal Parts and Products Surface Coating Operations at Auto and Truck Manufacturing Plants

Section 6. Exemptions, has been revised to clarify that any facility using Section 6 of the regulation may elect to use the instantaneous arithmetic average of the coatings used in the coating line.

III. Regulation 6.13 Standard of Performance for Existing Storage Vessels for Volatile Organic Compounds

Section 1. Applicability, has been revised to clarify that the regulation applies to any affected facility "* * * which was in being or had a construction permit issued by the District before September 1, 1976, and

not subject to Regulation 7.12, and which has a storage capacity greater than 250 gallons."

IV. Regulation 6.24 Standard of Performance for Existing Sources Using Organic Materials

Section 2, Definitions, subsection (b) is revised to read as follows:

"Organic materials" means organic compounds which are used as dissolvers, reaction media, viscosity reducers, cleaning agents, *reactants,* diluents, or thinners, except that such materials which have a vapor pressure *less* than 0.5 mm Hg at 220 degrees Fahrenheit shall not be considered to be included unless exposed to temperatures exceeding 220 degrees Fahrenheit."

V. Regulation 1.04 Performance Tests, Section 2. Test Requirements, Subsection (a) has been revised to read as follows:

"The District may require, for cause, the owner or operator of any affected facility to sample emissions in accordance with *EPA test method procedures. Alternate procedures may be used in special circumstances upon advance approval by the District.* All tests shall be made under the direction of persons qualified by training and/or experience in the field of air pollution control."

VI. Regulation 2.01 General Application has been revised to complement the District's Regulation 2.04 Construction or Modification of Major Sources in or Impacting Upon Non-attainment Areas (emission offset requirements) and Regulation 2.05 Prevention of Significant Deterioration of Air Quality.

Regulation 2.01 is basically informative, and references applicable District regulations.

VII. Regulation 2.03 Permit Requirements—General, Section 8. Reconstructed Sources, has been revised to read as follows:

"A reconstructed source will be treated as a new source (unless (53) (*ii*) *d.* of Regulation 1.02 applies). However, any economic or technical limitations will be taken into account in assessing whether the emission standards for a new source are applicable. *Unless the reconstruction would also result in a major modification, the provisions of Regulations 2.04 and 2.05 shall not apply to a reconstructed source."*

VIII. Regulation 2.07 Public Notification, Section 1. Opportunity for public comment and Section 2. PSD Notifications, have been revised to complement District Regulation 2.04 Construction or Modification of Major Sources in or Impacting Upon Non-attainment Areas (emission offset requirements), Regulation 2.05 Prevention of Significant Deterioration of Air Quality, and Regulation 2.12 Controlled Trading (including banking and bubble rules). Regulation 2.07 is basically informative and references the applicable District regulations.

IX. Regulation 7.12 Standards of Performance for New Storage Vessels for Volatile Organic Compounds

Section 5. Monitoring of Operations; Subsection (a) has been revised to read as follows:

"(a) The owner or operator of any storage vessel with a capacity greater than 40,000 gallons to which this regulation applies shall, for each such storage vessel, maintain a file of each type of volatile organic compound stored, *and* of the *maximum true* vapor pressure of *that liquid during the respective storage period."*

X. Regulation 2.11 Air Quality Model Usage

This regulation has been revised to complement Regulation 2.12 Controlled Trading (Including Banking and Bubble Rules), and Regulation 2.05 Prevention of Significant Deterioration of Air Quality. The changes do not affect the approvability of the regulation. They serve only to clarify the precedures for implementing the previously approved regulation.

EPA has reviewed the entire text of the District's regulations addressed in items I through X above. EPA finds the recent revisions and the entire regulations approvable.

Action: EPA today approves the following Air Pollution Control District of Jefferson County regulations as part of Appendix N of the Kentucky SIP (See discussion section above for titles): Regulations 1.04, 2.01, 2.03, 2.07, 2.11, 6.13, 6.23, 6.24, 6.29, 6.30, 6.31, 6.32, 6.33, 6.34, 6.36, 7.12, 7.23, 7.56, 7.57, 7.58, 7.59, 7.60 and 7.61.

This action will be effective March 12, 1984. However, if we receive notice within 30 days that someone wishes to submit critical comments, we will withdraw this action and will publish two subsequent notices before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [60 days from today]. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

Note.—Incorporation by reference of the Kentucky State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

(Secs. 110 and 172 of the Clean Air Act (42 U.S.C. 7410 and 7502))

Dated: January 4, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart S—Kentucky

In § 52.920, paragraph (c) is amended by adding paragraph (41) as follows:

§ 52.920 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(41) Revisions to Appendix N, submitted July 19, 1982 and March 21, 1983, by the Kentucky Department for Environmental Protection.

[FR Doc. 84-669 Filed 1-10-84; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-4-FRL 2504-8; TN-007]

Approval and Promulgation of Implemention Plans; Tennessee: 1982 Revision of Nashville-Davidson County O_3 Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On February 3, 1983 (48 FR 5038), EPA proposed to approve Tennessee's revision to its ozone (O_3) State Implementation Plan (SIP) for the Nashville-Davidson County area. The plan submitted by the State/Local agency demonstrated that attainment of

the ozone standard would occur on or before December 31, 1982. Further, the plan revision meets all requirements of the Clean Air Act and EPA policy. No comments were received on this proposed action. Therefore, EPA today approves the revision to the Tennessee SIP for Metropolitan Nashville-Davidson County area.

DATE: This action is effective February 10, 1984.

ADDRESS: Copies of this revision are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460;

EPA, Region IV, Air Management Branch, 345 Courtland Street, Atlanta, Georgia 30365; and

Tennessee Air Pollution Control Division, 150 9th North Ave., Terran Building, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Waymond Blackmon, EPA Region IV, Air Management Branch at 404/881-2864 (FTS: 257-2864).

SUPPLEMENTARY INFORMATION: The 1977 Amendments added a new Part D to Title I of the Clean Air Act. Under this Part, the States were required to revise their SIP's for all nonattainment areas and submit the revisions to EPA by January 1, 1979 (Sections 171-178 of the Act; Section 129(c) (uncodified) of Pub. L. 95-95). The revised plans were to provide for attainment by December 31, 1982, unless the State demonstrated that they could not attain either the ozone or carbon monoxide (CO) standard by that date despite the implementation of all reasonably available control measures (Sections 172(a)(2)), and requested an extension. If EPA approved this demonstration, the attainment date for ozone or CO could be extended up to December 31, 1987. States receiving such extensions were to submit a second SIP revision that provides for attainment by the approved attainment date and complies with all of the Part D requirements (Section 172(c)). These second SIP revisions had to be submitted by July 1, 1982 (Section 129(c) (uncodified), Pub. L. 95-95).

The State of Tennessee submitted its initial SIP revision for the Metropolitan Nashville-Davidson County ozone nonattainment area on February 13, 1979. The State requested that EPA extend the attainment date for the ozone standard in this area to December 31, 1987. EPA granted this request and approved the initial plan revision on August 13, 1980 (45 FR 53809). Tennessee submitted its 1982 ozone SIP revision on June 30, 1982. A full discussion of this SIP revision and of EPA's evaluation was contained in the February 3, 1983 (48 FR 5058), proposal notice and will not be repeated in detail here.

However, a brief discussion follows which presents the rationale for approving the plan revision. The ozone modeling analysis indicates that a 9.2% emission reduction will be needed to eliminate violations of the ozone standard in the area. Through adoption of rules and regulations for stationary sources and the Federal Motor Vehicle Emission Control Program, the local air agency demonstrated that a 35% reduction would occur by 1982, thus assuring an adequate margin over the 9.2% emission reduction calculated through use of ozone modeling. Because the present SIP demonstrates attainment of the ozone standard by December 31, 1982, EPA is rescinding the extension (until December 31, 1987) that had been granted when the 1979 SIP was approved. The new date for attainment of the ozone standard is December 31, 1982. The present submittal was evaluated using criteria that were applicable to the 1979 SIP. The State of Tennessee 1982 SIP for O_3 contains the appropriate stationary source control measures necessary to achieve the calculated emission reduction.

A 45-day public comment period was provided, ending March 21, 1983. During that time, no comments were received on the proposed action.

Action. EPA has found that Tennessee's 1982 ozone SIP revision for the Metropolitan Nashville-Davidson County area meets all requirements of the Clean Air Act and EPA policy. Moreover, there were no public comments on EPA's proposal to approve these revisions. Therefore, EPA approves these revisions to the Tennessee 1982 O_3 SIP for Metropolitan Nashville-Davidson County area.

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Note.—Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

(Secs. 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502))

Dated: January 4, 1984.

William D. Ruckelshaus,
Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

1. In § 52.2220, paragraph (c) is amended by adding paragraph (54) as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(54) Revisions to the Part D ozone plan for the Nashville-Davidson County nonattainment area, submitted on June 30, 1982, by the Tennessee Department of Public Health.

* * * * *

§ 52.2230 [Amended]

2. In the attainment date table of § 52.2230, the "e" (indicating attainment by 12/31/87) in the "ozone" column of the entry for the Davidson County nonattainment area (Middle Tennessee Intrastate AQCR) is replaced with a "d" (indicating attainment by 12/31/82).

[FR Doc. 84-603 Filed 1-10-84; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 1

[FPR Temp. Reg. 64, Supp. 1]

Agency Requests for Delegations of Procurement Authority for the Acquisition of ADP Equipment and Services

AGENCY: General Services Administration.

ACTION: Temporary regulation, supplement.

SUMMARY: The purpose of this regulation is to extend the expiration date of FPR Temporary Regulation 64. This

regulation extended, clarified, and modified the GSA alternate procedure that agencies may use to submit individual requests for delegations of procurement authority to acquire ADP resources. This supplement provides a continuation of a reduction of paperwork burdens and increases the economy and efficiency of Federal agencies in accordance with the objectives of the Paperwork Reduction Act.

DATES: Effective date: December 1, 1983; Expiration date: September 30, 1984.

FOR FURTHER INFORMATION CONTACT: Mary A. Blake, Policy Branch (KMPP), Policy and Regulation Division (202-566-0194)

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

In 41 CFR Chapter 1, FPR Temporary Regulation 64, Supplement 1 is added to the appendix at the end of the chapter.

Federal Procurement Regulations, Temporary Regulation 64, Supplement 1

December 9, 1983.

To: Heads of Federal agencies.

Subject: Agency requests for delegations of procurement authority for the acquisition of ADP equipment and services.

1. *Purpose.* This supplement extends the expiration date of FPR Temporary 64.

2. *Effective date.* This regulation is effective December 1, 1983.

3. *Expiration date.* This regulation expires September 30, 1984, unless sooner superseded or canceled.

4. *Information and assistance.* For further information and assistance contact General Services Administration (KMPP), Washington, DC 20405, telephone FTS or local 566-0194, commercial toll 202-566-0194.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84-648 Filed 1-10-84; 8:45 am]

BILLING CODE 6820-25-M

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41 CFR Part 101-11

[FPMR Amendment B-55]

Declassification of and Public Access to National Security Information

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This rule revises the procedures for the declassification of and public access to national security information in the legal custody or under the declassification jurisdiction of the National Archives and Records Service. This revision is required by the signing of Executive Order 12356 of April 2, 1982, (National Security Information) and the issuance of the Information Security Oversight Directive Number 1 of June 22, 1982. This rule affects the process for the mandatory declassification review of classified records by the National Archives and Records Service.

EFFECTIVE DATE: January 11, 1984.

FOR FURTHER INFORMATION CONTACT: Edwin A. Thompson (202-523-3165).

SUPPLEMENTARY INFORMATION: This regulation was published as a proposed rule on March 1, 1983 (48 FR 8498). Comments were received from 3 agencies. One agency recommended that the regulation should make a distinction between declassification of national security information and access to the declassified document under statute or regulation. A statement has been added to § 101-11.320 that documents declassified under the procedures in this regulation are still subject to the Freedom of Information Act, if accessioned agency records, or donor restrictions, if donated historical materials.

In response to concerns that notification to requestors of referrals for declassification review may reveal classified information, §§ 101-11.322-1 (a) and (b) and 101-11.323-1 (a) and (b) have been revised to clarify that NARS will not disclose to a researcher the name of the agency to which a referral has been made.

Two agencies expressed a preference for handling mandatory review of classified U.S. Government originated information and foreign government information (§§ 101-11.322 and 101-11.323) in the same way that mandatory review of classified White House originated information is handled. Because under Executive Order 12356 the Archivist of the United States has been given declassification authority only for White House information, this comment cannot be adopted.

The General Services Administration has determined that this rule is not a major rule for the purpose 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 costs to society.

List of Subjects in 41 CFR Part 101-11

Archives and records, Classified information, Freedom of information.

41 CFR Part 101-11 is amended as follows:

PART 101-11—RECORDS MANAGEMENT

1. The table of contents for Part 101-11 is amended by revising entries as follows:

2. Subpart 101-11.3a is revised to read as follows:

Subpart 101-11.3a—Declassification of and Public Access to National Security Information

§ 101-11.320 General provisions.

Declassification of and public access to national security information and material (hereafter referred to as "classified information" or collectively termed "information") is governed by

Executive Order 12356 of April 2, 1982 (47 FR 14874, April 6, 1982), and by the Information Security Oversight Office Directive Number 1 of June 22, 1982 (47 FR 27836, June 25, 1982). Documents declassified in accordance with this regulation may be withheld from release under the provisions of 5 U.S.C. 552(b) for accessioned agency records or § 105–61.202 for donated historical materials.

§ 101–11.321 Public requests for mandatory review of classified information under Executive Order 12356.

United States citizens or permanent resident aliens, Federal agencies, or State or local governments wishing to request mandatory review of classified information which has been accessioned into the National Archives and Records Service or which has been donated to the Government should identify the records or information desired and apply in writing to the appropriate NARS depository listed in 41 CFR 105–61.5101. The documents or materials containing the information should be described with sufficient specificity to enable NARS to locate it with a reasonable amount of effort. When practicable, a request shall include the name of the originator and recipient of the information, as well as its date, subject, and file designation. If the information sought cannot be identified from the description provided or if the information sought is so voluminous that processing it would interfere with NARS' capacity to serve all requesters on an equitable basis, NARS shall notify the requester that, unless additional information is provided or the scope of the request is narrowed, no further action will be taken. NARS shall review for declassification and release the requested information or those declassified portions of the request that constitute a coherent segment unless withholding is otherwise warranted under applicable law.

§ 101–11.322 Mandatory review of classified U.S. Government originated information.

§ 101–11.322–1 NARS action.

(a) Information less than 30 years old. NARS shall promptly acknowledge receipt of a request for mandatory review of classified U.S. Government originated information, and within 20 calendar days of receipt of the request, shall forward the request together with copies of the documents containing the requested information to the agency which originated the information or the agency which the Archivist determines has primary subject matter interest. NARS shall inform the requester that referrals have been made to the appropriate Government agency.

(b) Information more than 30 years old. NARS shall acknowledge receipt of a request for mandatory review of classified U.S. Government originated information which NARS may review for declassification using systematic review guidelines and within 60 calendar days of receipt of the request will act upon it and notify the requester of the action taken. If additional time is necessary to make a declassification determination, NARS shall notify the requester of the time needed to process the request. Except in unusual circumstances, NARS will make a final determination within 1 year of the receipt of the request. Information which NARS may not declassify using the systematic review guidelines will be promptly forwarded, with copies of documents containing the requested information, to the responsible agency. NARS shall inform the requester that referrals have been made to the appropriate Government agency.

§ 101–11.322–2 Agency action.

Upon receipt of a request for mandatory review of classified U.S. Government originated information forwarded by NARS, the originating or responsible agency shall:

(a) Either make a prompt declassification determination and notify the requester accordingly, or inform the requester and NARS of the additional time needed to process the request. Except in unusual circumstances agencies shall make a final determination within 1 year.

(b) Notify NARS of any other agency to which it forwarded the request in those cases requiring the declassification determination of another agency.

(c) Forward the declassified reproductions to the requester with their determination and also notify NARS of that determination. When the request cannot be declassified in its entirety, the agency must also furnish to the requester (with a copy to NARS):

(1) A brief statement of the reasons the requested information cannot be declassified; and

(2) A statement of the right to appeal within 60 calendar days of receipt of the denial, the procedures for taking such action; and the name, title, and address of the appeal authority. The agency appellate authority shall make a determination within 30 working days following the receipt of an appeal. If additional time is required to make a determination, the agency appellate authority shall notify the requester and NARS of the additional time needed and provide the requester with the reason for the extension. The agency appellate authority shall notify NARS and the requester in writing of the final determination and of the reasons for any denial.

(d) Furnish to NARS a copy of each document released only in part, marked to indicate the portions which remain classified.

§ 101–11.323 Mandatory review of foreign government information provided to the United States in confidence.

§ 101–11.323–1 NARS action.

(a) Information less than 30 years old. NARS shall promptly acknowledge receipt of a request for mandatory review of foreign government information and, within 20 calendar days of receipt of the request, shall forward the request, together with copies of the documents containing the requested information, to the agency which initially received or classified the information. If unable to identify the agency, NARS will forward the request to the agency which has primary subject matter interest. NARS will inform the requester that referrals have been made to the appropriate Government agency.

(b) Information more than 30 years old. NARS shall acknowledge receipt of a request for mandatory review of foreign government information which NARS may review for declassification using applicable systematic review guidelines, and within 60 calendar days of receipt of the request will act upon it and notify the requester of the action taken. If additional time is necessary to make a declassification determination, NARS shall notify the requester of the time needed to process the request. Except in unusual circumstances, NARS will make a final determination within 1 year of the receipt of the request. Requests for information, which NARS cannot declassify using the systematic review guidelines will be promptly forwarded, with copies of the documents containing the requested information, to the responsible agency. NARS will notify the requester that referrals have been made to the appropriate Government agency.

§ 101–11.323–2 Agency action.

Upon receipt of a request forwarded by NARS for review of foreign government information, the agency shall:

(a) Either make a prompt declassification determination and notify the requester accordingly, or inform the requester and NARS of the additional time needed to process the request. Except in unusual

circumstances agencies shall make a final determination within 1 year.

(b) Notify NARS of any other agency to which it forwarded the request in those cases requiring the declassification determination of another agency.

(c) Forward the declassified reproductions to the requester with their determination and also notify NARS of that determination. When the request cannot be declassified in its entirety, the agency must also furnish the reproduction and information cited in § 101–11.322–2 (c) and (d).

§ 101–11.324 Mandatory review of classified information originated by a defunct agency or received by a defunct agency from a foreign government.

§ 101–11.324–1 NARS action.

NARS is responsible for declassification of all information in the custody of NARS originated by an agency which has ceased to exist and whose functions have not been transferred to another agency and of all foreign government information originally received or classified by such an agency. NARS will promptly acknowledge receipt of requests for such information, review the information using applicable systematic review guidelines, and, when necessary, consult with any agency having primary subject matter interest. NARS shall either make a prompt declassification determination and notify the requester accordingly, or inform the requester of the additional time needed to process the request. Except in unusual circumstances NARS shall make a final determination within one year. If the request is denied in whole or in part, the Assistant Archivist for the National Archives or the Assistant Archivist for Presidential Libraries will furnish the requester a brief statement of the reasons for denial and a notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States (mailing address: General Services Administration (ND), Washington, DC 20408). Upon receipt of an appeal the Deputy Archivist shall, within 30 working days:

(a) Review the previous decision made to deny the information and, as necessary;

(b) Consult with the appellate authorities in any agency having primary subject matter interest in the information previously denied; and

(c) Notify the requester of the determination and make available to the requester any additional information that has been declassified as a result of the appeal.

§ 101–11.324–2 Agency action.

Upon receipt of a request forwarded by NARS for consultation regarding the declassification of information originated by a defunct agency or of foreign government information originally received or classified by a defunct agency, the agency with primary subject matter interest shall:

(a) Advise the Archivist whether the information should be declassified in whole or in part or should continue to be exempt from declassification; and

(b) Return the request to NARS along with a brief statement of the reasons any requested information should not be declassified.

§ 101–11.325 Mandatory review of classified White House originated information and foreign government information received or classified in the White House less than 30 years old.

Information originated by a President, the White House staff, by committees, commissions, or boards appointed by a President, or others specifically providing advice and counsel to a President or acting on behalf of a President (hereafter cited as White House originated information) is subject to mandatory review consistent with the provisions of applicable laws or lawful agreements that pertain to the respective Presidential papers or records. Unless precluded by such laws or agreements, White Houe originated information is subject to mandatory review 10 years after the close of the administration which created the materials or when the materials have been archivally processed, whichever occurs first.

§ 101–11.325–1 NARS action.

(a) NARS shall promptly acknowledge receipt of a request for mandatory review of such classified White House originated information and foreign government information received or classified in the White House.

(b) NARS will review the requested information, determine which agencies have primary subject matter interest, forward to those agencies copies of material containing the requested information, and request their recommendations regarding declassification.

(c) NARS will review the recommendations returned by the agencies and make its declassification determination within one year of receipt of the request, except in unusual circumstances.

(d) When the request cannot be declassified in its entirety, NARS will furnish the requester:

(1) A brief statement of the reasons the requested information cannot be declassified;

(2) Access to those portions of documents releasable only in part that constitute a coherent segment; and

(3) A notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States (mailing address: General Services Administration (ND), Washington, DC 20408).

§ 101–11.325–2 NARS appellate process.

Upon receipt of an appeal, the Deputy Archivist shall within 30 working days:

(a) Review the decision made to deny the information;

(b) Consult with the appellate authorities in agencies having primary subject matter interest in the information previously denied;

(c) Notify the requester of the determination and make available to the requester any additional information which has been declassified as a result of the appeal; and

(d) Notify the requester of the right to appeal denials of access to the Director, Information Security Oversight Office (mailing address: General Services Administration (Z), Washington, DC 20405).

§ 101–11.325–3 Agency action.

Upon receipt of a request forwarded by NARS for consultation regarding declassification of White House originated information and foreign government information received by or classified in the White House, the agency with primary subject matter interest shall:

(a) Advise the Archivist whether the information should be declassified in whole or in part or should continue to be exempt from declassification; and

(b) Provide a brief statement of the reasons any requested information should not be declassified and return the reproductions to NARS;

(c) Return all reproductions referred for consultation including a copy of each document which should be released only in part, marked to indicate the portions which should remain classified.

§ 101–11.326 Mandatory review of classified White House originated information and foreign government information received by or classified in the White House more than 30 years old.

(a) NARS shall promptly acknowledge the receipt of a request for mandatory review of classified White House originated information and foreign government information received by or classified in the White House more than 30 years old, and shall act upon that

request within 60 calendar days. If additional time is necessary to make a declassification determination, NARS shall notify the requester of the time needed to process the request. NARS will make a final determination within 1 year of the receipt of the request, except in unusual circumstances.

(b) NARS shall review the information using applicable systematic review guidelines and will make available to the requester information declassified using those guidelines.

(c) Information which cannot be declassified by NARS using systematic review guidelines will be promptly forwarded to the agencies with primary subject matter interest and further processed in accordance with § 101–11.325–1 (b) through (d) and §§ 101–11.325–2 through 101–11.325–3.

§ 101–11.327 Mandatory review of classified White House information in the custody of other agencies.

Agencies having custody of classified White House information of a previous administration shall forward requests for mandatory review of such information to the Office of the National Archives (mailing address: General Services Administration (NND), Washington, DC 20408) together with copies of documents containing the requested information and the agency's recommendations regarding declassification. NARS will make a declassification determination on such requests after consulting with any other agency with primary subject matter interest and will reply to the requester. If the request is denied in whole or in part, the requester may appeal within 60 calendar days of receipt of the denial to the Deputy Archivist of the United States (mailing address: General Services Administration (ND), Washington, DC 20408). Appeals are processed in accordance to the procedures listed in § 101–11.325–2.

§101–11–328 Liaison.

To ensure that NARS will be able to respond promptly to mandatory review requests and appeals from denials, the head of each agency shall be requested to provide NARS with the current name, title, and address of the agency's designated mandatory review and appellate authority.

§ 101–11.329 Requests for reclassification of information.

§101–11.329–1 Information originated by or under the declassification jurisdiction of Federal agencies.

An agency may request NARS to temporarily close, re-review, and possibly reclassify records and donated historical materials originated by the agency which were declassified in accordance with E.O. 12356 or predecessor Orders. The agency shall submit the request in writing to the Assistant Archivist for the National Archives (NN) or to the Assistant Archivist for Presidential Libraries (NL) (mailing address: General Services Administration (NL), Washington, DC 20408). If the urgency of the matter precludes a written request, an authorized agency official may make a preliminary request by telephone. A written request shall follow the oral request within 5 workdays. In the request the authorized agency official shall:

(a) Identify the records or donated historical materials involved as specifically as possible;

(b) Explain the reason the agency believes a re-review and possible reclassification may be necessary in the interest of national security; and

(c) Provide any information the agency may have concerning any previous public disclosure of the information in the records or donated historical materials.

§ 101–11.329–2 Information originated in the White House and under the declassification jurisdiction of the Archivist.

Requests from agencies to re-view and possibly reclassify information originated by a President; the White House staff; committees commissions, or boards appointed by the President; or others specifically providing advice and counsel to a President or acting on behalf of a President and which has been declassified and disclosed shall be submitted in writing to the Archivist of the United States. In the request the authorized agency official shall:

(a) Specifically identify the record or donated historical material;

(b) Explain the reason the agency believes a re-review and possible reclassification may be necessary in the interest of national security; and

(c) Provide any information the agency may have concerning the public disclosure of the information in the records or donated historical material.

§ 101–11.329–3 Appeals.

NARS may appeal to the Director, Information Security Oversight Office, any re-review or reclassification request from an agency when, in the Archivist's opinion, the facts of previous disclosure suggest that such action is unwarranted or unjustified.

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

Dated: November 3, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84-000 Filed 1-10-84; 8:45 am]

BILLING CODE 6820-24-M

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41 CFR Part 101–47

[FPMR Amdt. H–145]

Utilization and Disposal of Real Property Protection and Maintenance of Excess and Surplus Real Property

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: In order to avoid confusion that has been experienced in the past, this regulation clarifies and corrects certain inconsistences concerning the protection and maintenance of excess and surplus real property. Further, this regulation reflects current GSA policy requiring a written agreement between the disposal agency and the agency holding excess property in cases where the disposal agency will be required to pay for protection and mainteance.

EFFECTIVE DATE: January 11, 1984.

FOR FURTHER INFORMATION CONTACT: James H. Pitts, Office of Real Property (202) 535–7087.

SUPPLEMENTARY INFORMATION: GSA 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. GSA 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.

Under the Federal Property Management Regulations, the holding agency is responsible for the expense of protection and maintenance of excess and surplus real property for not more than 12 months, plus the period to the first day of the succeeding quarter of the fiscal year after the date that the property is available for immediate disposition. Thereafter the disposal agency becomes financially responsible for protection and maintenance costs, although the holding agency remains responsible for protecting and maintaining the property. This

regulation clarifies and corrects inconsistencies concerning the protection and maintenance of excess and surplus real property. Further, this regulation reflects current GSA policy requiring a written agreement between the disposal agency and the agency hoilding excess property in cases where the disposal agency will be required to pay for protection and maintenance.

The purpose of the required written agreement concerning protection and maintenance costs is to provide a basis for budget requests and to establish a reasonable level of protection and maintenance for each property. The written agreement will specify the date the disposal agency will assume the financial responsibility for protection and maintenance, and it will state the payment of protection and maintenance costs by the disposal agency will be contingent upon whether Congress appropriates adequate funds for such purpose, to the disposal agency. The written agreement alone will not provide authority to obligate funds and an obligational document will be signed by the parties only if and when funds are made available by Congress to the disposal agency.

List of Subjects in 41 CFR Part 101–47

Surplus government property, and Government property management.

Accordingly, 41 CFR Part 101–47 is amended as follows:

1. The table of contents for Part 101.47 is amended by revising the following:

PART 101.47—[AMENDED]

Sec.

101–47.202–9 Expense of Protection and maintenance.
101–47.402 Protection and maintenance.
101–47.402–2 Expense of Protection and maintenance.

Subpart 101–47.2—Utilization of Excess Real Property

2. Section 101–47.202–9 is recaptioned and revised to read as follows:

§ 101–47.202–9 Expense of protection and maintenance.

When there are expenses connected with the protection and maintenance of the property reported to GSA, the notice ot the holding agency of the date of receipt (see § 101–47.202–8) will indicate, if determinable, the date that the provisions of §101.47–202–2 will become effectivce. Normally this will be the date of the receipt of the report. If because of actions of the holding agency the property is not available for immediate disposition at the time of receipt of the report, the holding agency will be reminded in the notice that the period of its responsibility for the expense of protection and maintenance will be extended by the period of the delay.

Subpart 101–47.4—Management of Excess and Surplus Real Property

3. Section 101–47.402 is recaptioned to read as follows:

§ 101–47.402 Protection and maintenance.

4. Section 101–47.402–1 is revised to read as follows:

§ 101–47.402–1 Responsibility.

The holding agency shall retain custody and accountability for excess and surplus real property including related personal property and shall perform the protection and maintenance of such property pending its transfer to another Federal agency or its disposal. Guidelines for protection and maintenance of excess and surplus real property are in § 101–47.4913. The holding agency shall be responsible for complying with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan and initiating or cooperating with others in the actions prescribed for the prevention, containment, or remedy of hazardous conditions.

5. Section 101–47.402–2 is recaptioned and revised to read as follows:

§ 101–47.402–2 Expense of protection and maintenance.

(a) The holding agency shall be responsible for the expense of protection and maintenance of such property pending transfer or disposal for not more than 12 months, plus the period to the first day of the succeeding quarter of the fiscal year after the date that the property is available for immediate disposition. If the holding agency requests deferral of the disposal, continues to occupy the property beyond the excess date to the detriment of orderly disposal, or otherwise takes actions which result in a delay in the disposition, the period for which that agency is responsible for such expenses shall be extended by the period of delay. (See § 101–47.202–9.)

(b) In the event the property is not transferred to a Federal agency or disposed of during the period mentioned in paragraph (a) of this section, the expense of protection and maintenance of such property from and after the expiration date of said period shall be either paid or reimbursed to the holding agency, subject to the limitations herein, which payment or reimbursement shall be in the discretion of the disposal agency. The maximum amount of protection and maintenance to be paid or reimbursed by the disposal agency will be specified in a written agreement between the holding agency and the disposal agency, but such payment or reimbursement is subject to the appropriations by Congress to the disposal agency of funds sufficient to make such payment or reimbursement. In accordance with the written agreement, the disposal agency and the holding agency will sign an obligational document only if and when Congress actually appropriates to the disposal agency, pursuant to its request, funds sufficient to pay or reimburse the holding agency for protection and maintenance expenses, as agreed. In the absence of a written agreement, the holding agency shall be responsible for all expenses of protection and maintenance, without any right of contribution or reimbursement from the disposal agency.

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

Dated: November 29, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84–645 Filed 1–10–84; 8:45 am]

BILLING CODE 6820–06–M

National Archives and Records Service

41 CFR Part 105–61

[GSA Order ADM 7900.2 CHGE 21]

Public Use of Records, Donated Historical Materials, and Facilities in the National Archives and Records Service

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This rule revises procedures relating to public access to national security information in the legal custody of the National Archives and Records Service. This revision is required by the signing of Executive Order 12356, National Security Information, on April 2, 1982, and the issuance of the Information Security Oversight Office Directive Number 1 of June 22, 1982. This rule affects the process of systematic and mandatory review for the declassification of classified records in the custody of the National Archives and Records Service.

EFFECTIVE DATE: January 11, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Edwin A. Thompson (202–523–3165).

SUPPLEMENTARY INFORMATION: This regulation was published as a proposed rule on February 10, 1983 (48 FR 6139). Comments were received from one agency which questioned whether

National Archives and Records Service (NARS) notification to requestors of referrals for declassification review was in conflict with Executive Order 12356. The language in § 105-61.104-4(a) (1) and (2) has been revised to clarify that NARS will not disclose to a researcher the name of the agency to which a referral has been made.

Several other clarifications have been incorporated into this final rule. A statement has been added to § 105-61.104 to remind requestors that documents declassified under the procedures in this regulation may be withheld from the public under Freedom of Information Act exemptions or, for donated historical materials, donor restrictions. Section 105-61.104-1(c) has been modified to ensure that NARS will be informed of the agency's final determination in the event of an appeal. There are also several minor editorial changes.

The General Services Administration has determined that this rule is not a major rule for the purpose 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 105-61

Archives and records, Classified information, Freedom of information, Government property management, Privacy.

41 CFR Part 105-61 is amended as follows:

PART 105-61—PUBLIC USE OF RECORDS, DONATED HISTORICAL MATERIALS, AND FACILITIES IN THE NATIONAL ARCHIVES AND RECORDS SERVICE

1. The table of contents for Subpart 105-61.1 is amended by revising entries for §§ 105.61.104 through 105-61.104-9 and by removing the entry for § 105-61.104-10 as follows:

2. Sections 105-61.104, 105-61.104-1, 105-61.104-2, 105-61.104-3, and 105-61.104-4 are revised to read as follows:

§ 105-61.104 Access to national security information.

Declassification of and public access to national security information and material, hereinafter referred to as "classified information" or collectively termed "information," is governed by Executive Order 12356 of April 2, 1982 (47 FR 14874, April 6, 1982), the implementing Information Security Oversight Office Directive Number 1 of June 22, 1982 (47 FR 27836, June 25, 1982), and the Freedom of Information Act (5 U.S.C. 552). Documents declassified in accordance with this regulation may be withheld from release under the provisions of 5 U.S.C. 552(b) for accessioned agency records or § 105-61.202 for donated historical materials.

§ 105-61.104-1 Freedom of Information Act requests.

(a) *Requests for access to national security information under the Freedom of Information Act.* Requests for access to national security information under the Freedom of Information Act are processed in accordance with the provisions of § 105-61.103-1(b). Time limits for responses to Freedom of Information Act requests for national security information are those provided in the act rather than the longer time limits provided for responses to mandatory review requests specified by Executive Order 12356.

(b) *Agency action.* Upon receipt of a request forwarded by NARS for a determination regarding declassification, the agency with declassification responsibility shall:

(1) Advise whether the information should be declassified in whole or in part or should continue to be exempt from declassification;

(2) Provide a brief statement of the reason any requested information should not be declassified; and

(3) Return all reproductions referred for determination, including a copy of each document which should be released only in part, marked to indicate the portions which remain classified.

(c) *Denials and Appeals.* Denials under the Freedom of Information Act of access to national security information accessioned into the National Archives are made by designated officials of the originating or responsible agency. NARS notifies the requestor of the agency's determination. Appeals of denials of access to national security information must be made in writing to the appropriate authority in the agency having declassification responsibility for the denied information as indicated in §105-61.104-2. The agency appellate authority shall make a determination in accordance with 5 U.S.C. 552(b). The agency appellate authority shall notify NARS and the requestor in writing of the final denials. The agency will also furnish to NARS a copy of each document released only in part, marked to indicate the portions which remain classified.

§ 105-61.104-2 Declassification responsibility.

(a) *Classified U.S. Government originated information less than 30 years old.* Declassification of U.S. Government originated information less than 30 years old is the responsibility of the agency that originated the information.

(b) *Foreign government information provided to the United States in confidence and less than 30 years old.* Declassification of foreign government information (provided to the U.S. in confidence) less than 30 years old, is the responsibility of the agency that initially received or classified the foreign government information in consultation with concerned agencies. NARS may make a declassification determination on foreign government information less than 30 years old only when the responsible agency has specifically authorized this action.

(c) *Classified U.S. Government originated information and foreign government information provided in confidence more than 30 years old.* Systematic reviews of U.S. Government originated information and foreign government information (provided to the U.S. in confidence) more than 30 years

old (except for intelligence file series described in paragraph (d) of this section) accessioned into the National Archives or donated to the Government are the responsibility of NARS. NARS shall conduct systematic declassification reviews in accordance with guidelines provided by the head of the originating agency or, with respect to foreign government information, in accordance with guidelines provided by the head of the agency having declassification jurisdiction over the information. If no guidelines for review of foreign government information have been provided by the agency heads, the Director of the Information Security Oversight Office, after coordinating with the agencies having declassification authority over the information, shall issue general guidelines for systematic declassification reviews. With respect to the systematic reviews of Presidential papers or records, guidelines shall be developed by the Archivist of the United States and approved by the National Security Council.

(d) *Classified U.S. Government originated information concerning intelligence and cryptology.* Systematic reviews of file series of accessioned records and presidential papers or records concerning intelligence activities (including special activities), or intelligence sources or methods, and cryptology created after 1945, shall be conducted as the records become 50 years old. NARS shall conduct systematic declassification reviews in accordance with guidlines provided by the Director of the Central Intelligence Agency concerning information on intelligence activities and intelligence sources and methods, and by the Secretary of Defense concerning cryptologic information.

(e) *White House information.* Declassification of information from a previous administration which was originated by the President; by the White House staff; by committees, commission, or boards appointed by the President; or by others specifically providing advice and counsel to a President or acting on behalf of the President (hereinafter referred to as "White House information") is the responsibility of the Archivist of the United States. Declassification determinations will be made after consultation with agencies having primary subject matter interest and will be consistent with the provisions of applicable laws or lawful agreements.

(f) *Information orginated by a defunct agency.* NARS is responsible for declassification of all information in the custody of NARS originated by an agency that has ceased to exist and whose functions have not been transferred to another agency and of all foreign government information originally received or classified by such an agency. NARS shall make declassification determinations after consultation with all agencies having primary subject matter interest.

§ 105-61.104-3 Public requests for mandatory review of classified information under Executive Order 12356.

United States citizens or permanent resident aliens, Federal agencies, or State or local governments wishing to request mandatory review of classified information that has been accessioned into the National Archives or donated to the Government may do so by describing the document or material containing the information with sufficient specificity to enable NARS to locate it with a reasonable amount of effort. When practicable, a request shall include the name of the originator and recipient of the information, as well as its date, subject, and file designation. If the information sought cannot be identified from the description provided or if the information sought is so voluminous that processing it would interfere with NARS' capacity to serve all requestors on an equitable basis, NARS shall notify the requestor that, unless additional information is provided or the scope of the request is narrowed, no further action will be taken. NARS shall review for declassification and release the requested information or those declassified portions of the request that constitute a coherent segment unless withholding is otherwise warranted under applicable law. Requests for mandatory review should be addressed to the appropriate NARS depository listed in § 105-61.5101.

§ 105-61.104-4 Mandatory review of classified U.S. Government originated information and foreign government information provided to the United States in confidence.

(a) *NARS action.*—(1) *Information less than 30 years old.* NARS shall promptly acknowledge receipt of a request for mandatory review of classified U.S. Government originated information, and within 20 calendar days of receipt of the request, shall forward the request, with copies of the documents containing the requested information to the agency that originated the information or to the agency that the Archivist determines has primary subject matter interest. With respect to foreign government information, the request and copies of the documents shall be forwarded to the agency which initially received or classified the information. If unable to identify that agency, NARS shall forward the request to the agency which has primary subject matter interest. NARS shall inform the requestor that referrals have been made to the appropriate Government agency.

(2) *Information more than 30 years old.* NARS shall acknowledge receipt of a request for mandatory review of classified U.S. Government originated information or foreign government information which NARS may review for declassification using systematic review guidelines, and within 60 days of receipt of the request shall act upon it and notify the requestor of the action taken. If additional time is necessary to make a declassification determination, NARS shall notify the requestor of the time needed to process the request. NARS will make a final determination within 1 year of the receipt of the request. Information that NARS may not declassify using the systematic review guidelines shall be promptly forwarded, with copies of the documents containing the requested information, to the responsible agency. NARS shall notify the requestor that referrals have been made to the appropriate Government agency.

(b) *Agency action.* Upon receipt of a request for mandatory review of classified U.S. Government originated information or foreign government information forwarded by NARS, the originating or responsible agency shall:

(1) Either make a prompt declassification determination and notify the requestor accordingly, or inform the requestor and NARS of the additional time needed to process the request. Except in unusual circumstances, agencies shall make a final determination within 1 year.

(2) Notify NARS of any other agency to which it forwards the request in those cases requiring the declassification determination of another agency.

(3) Forward the declassified reproductions to the requestor with their determination and also notify NARS of that determination. When the request cannot be declassified in its entirety the agency must also furnish the requestor (with a copy to NARS):

(i) A brief statement of the reasons the requested information cannot be declassified; and

(ii) A statement of the right to appeal within 60 calendar days of receipt of the denial, the procedures for taking such action, and the name, title, and address of the appeal authority. (The agency appellate authority shall make a

determination within 30 working days following the receipt of the appeal. If additional time is required to make a determination, the agency appellate authority shall notify the requestor and NARS of the additional time needed and provide the requestor with the reason for the extension. The agency appellate authority shall notify NARS and the requestor in writing of the final denials.)

Note.—The agency will also furnish to NARS a copy of each document released only in part, marked to indicate the portions which remain classified.

3. Section 105–61.104–5 is removed and §§ 105–61.104–6 through 105–61.104–10 are redesignated § 105–61.104–5 through § 105–61.104–9 and revised as follows:

§ 105–61.104–5 Mandatory review of information originated by a defunct agency or received by a defunct agency from a foreign government.

(a) *NARS action.* NARS is responsible for declassification of all information in the custody of NARS originated by an agency which has ceased to exist and whose functions have not been transferred to another agency and of all foreign government information originally received or classified by such an agency. NARS shall promptly acknowledge receipt of requests for such information, review the information using systematic review guidelines, and, when necessary, consult with any agency having primary subject matter interest. NARS shall either make a prompt declassification determination and notify the requestor accordingly, or inform the requestor of the additional time needed to process the request. Except in unusual circumstances NARS shall make a final determination within 1 year. If the request is denied in whole or in part, the Assistant Archivist for the National Archives or the Assistant Archivist for Presidential Libraries shall furnish the requestor a brief statement of the reasons for denial and a notice of the right to appeal the determination within 60 calendar days to the Deputy Archivist of the United States (mailing address: General Services Administration (ND), Washington, DC 20408). Upon receipt of an appeal, the Deputy Archivist shall, within 30 calendar days:

(1) Review the previous decision made to deny the information;

(2) Consult, as necessary, with the appellate authorities in any agency having primary subject matter interest in the information previously denied; and

(3) Notify the requestor of the determination and make available to the requestor any additional information that has been declassified as a result of the appeal.

(b) *Agency action.* Upon receipt of a request forwarded to NARS for consultation regarding the declassification of information originated by a defunct agency or of foreign government information originally received or classified by a defunct agency, the agency with primary subject matter interest shall:

(1) Advise the Archivist whether the information should be declassified in whole or in part or should continue to be exempt from declassification; and

(2) Return the request to NARS along with a brief statement of the reasons why any requested information should not be declassified.

§ 105–61.104–6 Mandatory review of classified White House originated information and foreign government information received or classified in the White House less than 30 years old.

(a) *NARS action.* (1) White House information is subject to mandatory review consistent with the provisions of applicable laws or lawful agreements that pertain to the respective Presidential papers or records. Unless precluded by such laws or agreements, White House originated information is subject to mandatory review 10 years after the close of the administration which created the materials or when the materials have been archivally processed, whichever occurs first.

(2) NARS shall promptly acknowledge receipt of a request for mandatory review of White House originated information and foreign government information received or classified by the White House which is requested more than 10 years after the close of the administration or after it has been archivally processed, whichever occurs first.

(3) NARS shall review the requested information, determine which agencies have primary subject matter interest, forward to those agencies copies of material containing the requested information, and request their recommendation regarding declassification.

(4) NARS shall review the recommendations returned by the agencies and make its declassification determination within one year of receipt of the request.

(5) When the request cannot be declassified in its entirety, NARS shall furnish the requestor:

(i) A brief statement of the reasons the requested information cannot be declassified;

(ii) Access to the portions of documents releasable in part that constitute a coherent segment; and

(iii) A notice of the right to appeal the determination within 60 days to the Deputy Archivist of the United States (mailing address: General Services Administration (ND), Washington, D.C. 20408).

(6) Upon receipt of an appeal, the Deputy Archivist shall within 30 calendar days:

(i) Review the decision to deny the information;

(ii) Consult with the appellate authorities in agencies having primary subject matter interest in the information previously denied;

(iii) Notify the requestor of the determination and make available to the requestor any additional information which has been declassified as a result of the appeal; and

(iv) Notify the requestor of the right to appeal denials of access to the Director, Information Security Oversight Office (mailing address: General Services Administration (Z), Washington, DC 20405).

(b) *Agency Action.* Upon receipt of a request forwarded to NARS for consultation regarding declassification of White House originated information and foreign government information received or classified by the White House, the agency with primary subject matter interest shall:

(1) Advise the Archivist of the United States whether the information shall be declassified in whole or in part or should continue to be exempt from declassification;

(2) Provide a brief statement of the reasons any requested information should not be declassified; and

(3) Return all reproductions referred for consultation including a copy of each document that should be released only in part, marked to indicate the portions which remain classified.

§ 105–61.104–7 Mandatory review of classified White House originated information and foreign government information received or classified by the White House more than 30 years old.

(a) NARS shall promptly acknowledge the receipt of a request for mandatory review of classified White House originated information and foreign government information received by or classified in the White House that is more than 30 years old, and shall act upon the request within 60 days. If additional time is necessary to make a declassification determination, NARS shall notify the requestor of the time needed to process the request. NARS

shall make a final determination within 1 year of the receipt of the request.

(b) NARS shall review the information using applicable systematic review guidelines and shall make available to the requestor information declassified using those guidelines.

(c) Information which cannot be declassified by NARS using systematic review guidelines shall be forwarded to the agencies with primary subject matter interest and further processed in accordance with § 105-61.104-6 (a) (2) through (5) and (b).

§ 105-61.104-8 Access by historical researchers and former Presidential appointees.

(a) Access to classified information may be granted to U.S. citizens who are engaged in historical research projects or who previously occupied policy-making positions to which they were appointed by the President. Persons desiring permission to examine material under this special historical researcher/Presidential appointees access program should contact NARS at least 4 months before they desire access to the materials to permit time for the responsible agencies to process the requests for access. NARS shall inform requestors of the agencies to which they will have to apply for permission to examine classified information and shall provide requestors with the information and forms to apply for permission from the Archivist of the United States to examine classified information originated by the White House or classified information in the custody of the National Archives which was originated by a defunct agency.

(b) Requestors may examine records under this program only after the originating or responsible agency:

(1) Determines in writing that access is consistent with the interest of national security;

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with Executive Order 12356; and

(3) Limits the access granted to former presidential appointees to items that the person originated, reviewed, signed, or received while serving as a presidential appointee.

(c) To grant against the possibility of unauthorized access to restricted records, a director may issue instructions supplementing the research room rules provided in § 105-61.102.

§ 105-61.104-9 Fees.

NARS will charge requestors for copies of declassified according to the fees listed in 41 CFR 105-61.5206.

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

Dated: November 10, 1983.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 84-644 Filed 1-10-84; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 68

[CC Docket No. 83-427; FCC 83-565]

Access to Telecommunications Equipment by the Hearing Impaired and Other Disabled Persons

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending its rules to incorporate the requirements of the Telecommunications for the Disabled Act of 1982, which ensure that hearing impaired persons have reasonable access to telephone service and allow telephone carriers to provide equipment needed by persons with hearing, sight, speech or mobility impairments to utilize the telephone network. These actions are necessary to maintain affordability of such equipment and to enable persons with the disabilities listed to function as fully participating members of society. The amendments will facilitate access of disabled persons to necessary equipment and services in both residential and non-residential settings, and through the adoption of technical specifications and labeling requirements, will enable manufacturers, telephone suppliers, and customers to determine whether particular telephones are usable by hearing aid wearers.

EFFECTIVE DATE: February 10, 1984.

FOR FURTHER INFORMATION CONTACT: Carl Gold, 202-632-4890.

List of Subjects

47 CFR Part 64

Communications common carriers, Telephone.

47 CFR Part 68

Administrative practice and procedure, Communications common carriers, Communications equipment, Telephone.

Report and Order

In the Matter of Access to Telecommunications Equipment by the Hearing Impaired and Other Disabled Persons. CC Docket No. 83-427.

Adopted: December 1, 1983.

Released: December 23, 1983.

By the Commission: Chairman Fowler issuing a separate statement.

I. Introduction

1. The Telecommunications for the Disabled Act of 1982, Pub. L. 97-410 (to be codified as 47 U.S.C. 610) (Act) was signed into law on January 3, 1983. It is designed to resolve problems that persons with physical disabilities may have in obtaining access to the telephone network. The Act requires that the Commission, no later than January 3, 1984, (1) establish regulations to ensure reasonable access to telephone service for the hearing impaired; (2) establish regulations requiring that certain categories of telephones designated "essential" be internally compatible with hearing aids specially designed for telephone use; (3) adopt technical standards which will effectuate the above regulations; (4) establish requirements for labeling telephone packaging to inform consumers whether a telephone is compatible with hearing aids; (5) adopt rules to allow carriers to provide "specialized terminal equipment" (*i.e.*, CPE) to persons with hearing, sight, speech and mobility impairments, and permit state commissions to allow carriers to recover in tariffs for communications services "reasonable and prudent costs not charged directly to users of such equipment." In addition, the Act delegates to state commissions the authority to enforce the rules we adopt concerning reasonable access to telephone service and compatibility of "essential" telephones. The Act requires the Commission to consider the costs and benefits to all telephone users of any regulations enacted, and to encourage the use of currently available technology without discouraging or impairing the development of new technology. We are, as explained in this Order, amending our rules to implement the requirements of the Act. Final rules adopted herein are attached as Appendix C.

2. Pending issuance of regulations to implement the Act, we granted a waiver to all carriers to offer new "specialized CPE" (*i.e.* the "specialized terminal equipment" referred to above) on a tariffed or untariffed basis to persons with impaired hearing, vision, speech or mobility. We also permitted the Bell Operating Companies (BOC's) to offer

such equipment without forming a separate subsidiary as required by *Computer II*. That waiver contained a temporary definition of "specialized CPE" which is subject to revision in this rulemaking. This waiver was granted to avoid disrupting the provision of equipment and services necessary for disabled persons to access the telephone network. *American Telephone and Telegraph Co., Petition for Waiver Allowing BOCs to Provide Under Tariff New CPE for the Disabled*, 92 FCC 2d 38 (1983) (*Waiver Order*).

3. As a first step in implementing the Act, we adopted a Notice of Proposed Rulemaking (Notice) and solicited comments and reply comments on the issues mentioned above. —— FCC 2d ——, FCC 83–176, released May 4, 1983, 48 FR 20771 (May 9, 1983).[1] Comments were received from telephone carriers, equipment manufacturers, state public utility commissions, organizations representing persons with impaired hearing and other disabilities, a Member of Congress, and other members of the public.[2]

4. Recently we denied the request of the American Telephone & Telegraph Company (AT&T) that this Commission authorize it to offer "specialized CPE" on a detariffed basis. We based this determination on our finding that it would best effectuate the purposes of the Act to leave the decision whether or not to detariff this CPE to each state. *American Telephone and Telegraph Co., Request to Offer Specialized CPE for the Disabled on a Detariffed Basis*, —— FCC 2d ——, FCC 83–517, released November 25, 1983. We are herein modifying our Computer II [3] rules to implement this decision.

II. Communications Needs of the Disabled and Current Efforts To Meet Those Needs

A. Congressional Cost-Benefit Analysis

5. Before passing the Act, Congress weighed the likely costs and benefits to all persons of requiring that certain telephones be made compatible with hearing aids and that carriers be able to recover the costs of providing certain "specialized CPE" to disabled consumers in tariffs for regulated services. A summary of significant findings included in the Act and the accompanying House Committee Report [4] is necessary to understand the actions we are taking.

6. The Act's provisions requiring compatibility between telephone and hearing aids "specially designed for telephone use" [5] are intended to benefit the more than ten million Americans whose hearing is sufficiently impaired to require the use of a hearing aid. Congress found that the level of production of compatible telephones is sufficient that such telephones are widely available.[6] Congress found, however, that a "lack of technical standards ensuring compatibility between hearing aids and telephones," [7] necessitated that "adoption of technical standards * * * to ensure compatibility * * * thereby accommodating the needs of individuals with hearing impairments." [8]

7. Congress also found that the hearing of 1.2 million Americans is too diminished to use a telephone even with a hearing aid.[9] These persons require other devices to utilize the telephone network, the most widely used being the "telecommunications device for the deaf" (TDD). The TDD is basically a teletypewriter with a small display screen, which may be equipped with a printer. The TDD sends and receives messages over the telephone network. Some TDDs are directly hard-wired into the network, while others are connected through acoustic couplers.

8. Other persons are affected by impaired speech, vision or mobility. They can utilize the network only through a variety of devices which modify or are ancillary to a telephone. The House Report cites examples of commercially available products including artificial larynxes and breath-activated telephones, and products which might become available, *e.g.*, a voice-activated telephone.[10]

9. Congress found that equipment enabling persons with disabilities to utilize the telephone network has traditionally been provided by telephone companies, often at prices which are subsidized pursuant to state-sanctioned programs. Subsidization has been effectuated by various methods, including tariffs which reflect a decision that part of the cost of such equipment should be built into the prices of other products and services, and surcharges billed directly to general ratepayers.[11] Congress was concerned that *Computer II's* prohibition on tariffing CPE would eliminate such subsidization, making "specialized CPE" unaffordable and depriving many disabled persons of access to telephone service. Congress stated that this might deprive many individuals of the opportunity to have gainful employment, and even require institutionalization of those disabled persons whose health must be frequently monitored. As a result, Congress decided that the costs to society of lost telephone usage including impairment of the quality of life for the disabled, far exceed the costs of subsidizing products and services needed by the disabled to use the telephone network.[12] Accordingly, Congress, sought to provide each state the power to subsidize "specialized CPE," in any manner which it finds most effective.

10. Based upon its cost-benefit analysis, Congress made the following findings which are relevant to our determinations herein. The regulatory costs to implement the Act and monitor its implementation are minor.[13] It is not costly to maintain production of hearing aid-compatible telephones.[14] In fact, Congress found that the incremental cost of manufacturing a telephone so as to be compatible rather than incompatible is currently insignificant.[15]

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[1] At the same time, the Commission terminated an earlier proceeding, Telecommunications Services for the Deaf and Hearing Impaired, CC Docket No. 78–50, —— FCC 2d ——, FCC 83–177, released May 4, 1983, which involved issues similar to those raised by the Act. That Order indicated that certain issues would be addressed in the instant proceeding, including the inability of individuals using telecommunications devices for the deaf (TDDs) in the ASCII format to communicate with persons using TDDs in the Baudot format.

[2] Summaries of comments and reply comments are attached as Appendices A and B, respectively. In addition, numerous informal comments were received. These comments were considered in rendering this decision but are not summarized in this Order.

[3] Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (1980) (Final Decision), *reconsideration*, 84 FCC 2d 512 (1981), *aff'd sub nom.* CCIA v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 103 S. Ct. 2109 (1983).

[4] H.R. Rep. No. 888, 97th Cong., 2d Sess. (1982) (House Report).

[5] Act, section 610(b). The House Report explains that most hearing aids are "specially designed for telephone use," *i.e.*, contain a "telecoil" which is activated by a magnetic field generated by a telephone handset. 80% of telephones currently in use generate a sufficient field to activate the telecoil, which is necessary to permit feedback-free reception loud enough for the user to hear. House Report at 8. Telephones which internally generate the required magnetic field will be referred to throughout this order as "hearing aid-compatible" or "compatible."

[6] *See* Act, § 2(2); House Report at 11.

[7] Act, § 2(3).

[8] *Id.*, § 2(4).

[9] *See* House Report at 4.

[10] *Id.* at 3. A more complete list of products which assist the disabled in using the telephone is described in para. 13, *infra*.

[11] *See* H. Rpt. at 3.

[12] H. Rpt. at 3–4.

[13] H. Rpt. at 7.

[14] *Id.* at 8.

[15] *But see* H. Rpt. at 8, fn. 4, which notes that technological changes may increase the cost differential.

It is more cost-effective for the states than the Commission to enforce requirements that "essential telephones" be hearing aid-compatible.[16] Finally, any costs to ensure the availability and affordability of equipment necessary for disabled persons to use the network are outweighed by the benefits to society that will result when "these individuals can participate as self-sustaining employees and consumers in the national economy and can safely and conveniently travel from state to state with equal access to airports, hotels, restaurants, and other places of public accommodation."[17]

B. Current Availability of Telecommunications Equipment and Services Beneficial to Persons With Disabilities

1. *Hearing Aid-Compatible Telephones*

11. Congress found that an increasing portion of telephones in production are or can be made hearing aid-compatible. AT&T represents that all telephones it provides which are activated by coins or credit cards are already compatible. General Telephone & Electronic Service Corporation (GTE) states that all of its coin-operated telephones are hearing aid-compatible.[18] United Telephone System (UTS) states that all new telephones purchased by UTS companies for coin operation are compatible.[19] AT&T represents that by the end of 1984, almost all telephones produced by Western Electric Company will be compatible.[20] GTE and UTS, however, comment that the compatibility of telephones they offer varies. They attribute this variance, at least in part, to the absence of uniform standards defining compatibility, a situation which the Act is designed to correct.[21]

2. *Other Devices That Assist the Disabled*

12. Telecommunications Devices for the Deaf (TDDs) are the primary means by which deaf and speech-impaired individuals are able to access the telephone network. Some parties argue that if TDDs are not subsidized, if special assistance in accessing the network is not provided, and some improvements in technology are not made, TDDs are deficient as a substitute for telephones. First, they are more costly than most basic telephone equipment. AT&T has represented that retail price of certain TDDs to be approximately $600 plus delivery charges.[22] Second, many older TDDs were often teletypewriters taken out of service and donated by communications companies. Those TDDs use the Baudot format, with a modem that allows only one person to transmit messages at a time. On the other hand, many currently produced TDDs use the ASCII format with a modem allowing simultaneous transmission. The two formats are incompatible, and it appears that an affordable converter is not yet in production.[23] It may be too costly to convert a TDD from Baudot to ASCII or to retrain Baudot users to use ASCII, which is the format more likely to be used in the future.[24] Finally, TDD users require special operator and directory services to access the network.

13. In addition to TDDs, a number of other devices and assemblies of equipment are currently available which enable persons with physical impairments to utilize the network.[25] Aids for persons with impaired speech include the amplifying handset and artificial larynx. Aids for persons with impaired hearing include amplifying handsets and headsets, receivers which transmit messages by bone conduction, and devices which use light or vibrations to signal incoming calls. Aids for persons with impaired vision include large-number dials and stickers and a light-sensitive probe that produces an audible response to indicate on which line a call is incoming on a multi-button telephone set. Code-Com sets enable visually or hearing impaired persons to send and receive coded messages through lights or vibrations. Persons with impaired mobility can obtain speakerphones and other devices which allow hands-free calling, and single number dialers which require only that the caller press a button which dials a preprogrammed emergency number.

3. *Current Programs Allowing the Disabled To Use the Network*

14. Many states now help assure the availability of this equipment to the disabled through a variety of programs. The following is not intended to be an exhaustive list. California requires that every telephone ratepayer pay a small surcharge (currently 3¢ per month) to a trust fund. The trust fund reimburses exchange carriers who provide TDDs to deaf persons at no charge beyond the monthly rate for local telephone service. California also requires carriers to provide certain types of "specialized" CPE to the disabled, such as touchcalling instruments, amplified handsets, and speakerphones, at one-half the ordinary tariff rate, allowing carriers to recover any unpaid costs in rate proceedings.[26] A Michigan statute requires that exchange carriers sell or lease TDDs to the deaf or severely hearing impaired at the carrier's purchase cost, with mandatory application of lease payments to the purchase price.[27] The Wisconsin Public Services Commission requires that TDDs (apparently costing up to $250) be provided as part of the basic local exchange rate. Maintenance is provided as part of the basic local exchange rate.[28] The Kentucky Utility Regulatory Commission requires carriers to provide TDDs to deaf persons at the "actual direct cost to the utility."G529 The New Hampshire Public Utilities Commission has ordered that various devices other than TDDs be provided at the rate for basic exchange services.[30] Minnesota has approved tariffs filed by Northwestern Bell and Continental Telephone which offer for sale specialized terminal equipment under low-interest credit arrangements.

15. In addition to providing equipment beneficial to the disabled, some carriers provide special services necessary for disabled customers to access that network. AT&T-affiliated BOCs have regional offices which provide information concerning products and services designed to aid persons with disabilities, and specialized repair and related services.[31] GTE states that it offers similar services itself or "participates with the BOCs via" BOC assistance centers "in many parts of the country."[32] In addition, AT&T provides

[16] *Id.* at 14.

[17] H. Rpt/ at 4 (Footnote omitted).

[18] AT&T Comments at A2-5; GTE Comments at 8, 9, 14.

[19] UTS Comments at 3.

[20] AT&T Comments at A-1, 2.

[21] UTS Comments at 3; GTE Comments at 8, 9, 14.

[22] Supplementary Comments at 6, n. 9. Certain TDDs are currently available at lower retail prices, but all are significantly more costly than basic telephones.

[23] *See* AT&T Comments at 12.

[24] "A Nationwide Communications System for the Hearing Impaired," NTIA Contract No. NT-81-SAC-00070 at 10, 15 (October 1981).

[25] *See* "Telecommunications Services for Special Needs" (Bell System publication).

[26] Comments of California Public Utilities Commission at 1-4 (hereinafter California).

[27] Mich. Comp. Laws § 484.103.

[28] Order of Wisconsin Public Service Commission 05-TV-6 (Feb. 20, 1980).

[29] Order of Ky. Util. Reg'y Comm'n, Admin. Case No. 220 (Feb. 19, 1980).

[30] N.H. Pub. Util. Comm'n., Order No. 15752, Dkt. DR 82-70.

[31] AT&T Comments at 3-6, Reply at 7-9. AT&T intends, after the planned divestiture of the BOCs in 1984, to provide product and service information and distribution through one nationwide center which would be accessed by a toll-free number. AT&T Comments at 5.

[32] GTE Comments at 3-4.

toll-free operator and directory assistance to disabled customers of any carrier.[33] Some carriers provide discounts on TDD toll rates, recognizing the slow speed of information transmission, and exemptions from directory or operator assistance charges on telephone calls made by persons with diminished vision or mobility.

III. Adoption of Regulations To Implement the Telecommunications for the Disabled Act

A. Introduction

16. In order to ensure that every hearing impaired person has reasonable access to telephone service, and that persons with other disabilities can obtain specialized CPE at affordable rates, we are amending Parts 64 and 68 of our Rules and Regulations [34] to achieve the purposes of the Telecommunications for the Disabled Act. The rules we are adopting ensure that every person who requires a hearing aid-compatible telephone can obtain one. Exchange carriers are required to provide such telephones if unavailable from other sources. The Rules also ensure that TDD users will be provided the operator and directory assistance they require to access the telephone network. After January 1, 1985, all telephones which are installed in "essential" locations, as defined in the Rules, must be hearing aid-compatible. All coin-operated and "emergency use" telephones, as defined in the Rules, which were installed prior to January 1, 1985, must be converted to hearing aid-compatibility by that date. We are adopting a uniform technical standard which will allow confirmation of whether telephones are actually hearing aid-compatible. We are also requiring that all telephones offered for sale after June 1, 1984, be accompanied by package labelling or written statements notifying the prospective purchaser whether or not the telephone is hearing aid-compatible, and if not, disclosing that the instrument may not be used as "essential." Finally, we are modifying our Rules to conform to the Act's directive that carriers may offer specialized CPE, either on a tariffed or untariffed basis as each state may direct.

B. Regulations To Ensure Reasonable Access to Telephone Service by the Hearing Impaired

1. *Summary of Rules*

17. Section 610(a) of the Act states:

> The Commission shall establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing.

We are taking several actions to ensure that hearing impaired consumers have reasonable access to telephone service. We are requiring that exchange carriers make available a hearing aid-compatible telephone, on request to each user who cannot otherwise obtain such a telephone. We are requiring any carrier currently providing specialized operator and directory assistance for TDD users notify regulatory authorities six months prior to any intended termination of such service. No other actions are necessary to ensure availability of transmission services needed by the hearing impaired to access the network, because hearing impaired persons who are able to use telephones with or without ancillary devices are afforded the same range of operator and directory assistance as persons without impaired hearing. There currently exist various exemptions and discounts on charges for TDD assistance and discounts on rates for TDD toll calls. We endorse the offering of beneficial rates for such services, which we note are not mandated by the Act. The actions we are taking, together with the actions we are taking to implement subsections (b), (c) and (d) of the Act (see paras. 23–44, *infra*), ensure the accessibility of telephone service to the hearing impaired.

2. *Provision of Hearing Aid-Compatible Telephones*

18. We are adopting rules to ensure that hearing aid users have access to telephone service by requiring that exchange carriers supply customers who are hearing impaired with compatible telephones, on a detariffed basis, after other efforts to procure such a telephone have failed.[35] Tariffing of hearing aid-compatible telephones is unwarranted because, as explained in paragraph 46, *infra*, hearing aid-compatible telephones are not "specialized CPE." Although Congress was confident that manufacturing of hearing aid-compatible telephones is nearing universality, comments of Independent carriers in this proceeding indicate that availability may be limited in non-urban areas, and representatives of the hearing impaired have complained that current "on request" programs by which carriers voluntarily provide compatible telephones are ineffective.[36] Recently we adopted a plan which allows states, until June 30, 1985, to require exchange carriers to provide and maintain basic telephones for subscribers in isolated areas who cannot obtain telephones from unregulated entities.[37] We conclude herein that hearing impaired consumers must be permanently protected from similar failure of the marketplace to provide hearing aid-compatible telephones. Our new rule should be interpreted consistently with "provider of last resort" provisions until expiration of those provisions. We further find that the regulation will not be unduly burdensome to carriers who will have an ample supply from which to procure hearing aid-compatable telephones if necessary. We also conclude that requiring a carrier to convert a convertible incompatible telephone upon request of a hearing impaired consumer does not constitute retrofitting prohibited by section 610(f) of the Act because the customer, and not the carrier, will bear the cost of conversion.

19. Several parties take the position that subsection (a) requires us to take more expansive actions. Two commenters argue that we should ensure that all telephones are hearing aid-compatible by requiring hearing aid-compatibility as a prerequisite to registration under Part 68.[38] The Organization of Use of the Telephone (OUT) and the American Speech-Language-Hearing Association (ASLHA) recommend that registration of all telephones under Part 68 of our Rules be conditioned upon hearing aid compatibility. OUT argues that this would be the most cost-effective and most easily-administered means of ensuring that each hearing aid wearer has access to a compatible telephone. We agree that such a requirement could effectively assure hearing aid users of access to compatible telephones and might be relatively simple to administer. We find, however, that adopting the requirement advocated by OUT and ASLHA would contravene the purposes of the Act, while the requirement we are adopting furthers those purposes. Congress could have required that every

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[33] AT&T Comments at 3, Reply Comments at 8.

[34] 47 CFR Parts 64, 68.

[35] The requirements of the regulation may be met either by the sale of new compatible telephones or conversion of existing incompatible ones.

[36] Organization for Use of the Telephone (OUT), Reply Comments at 12.

[37] National Association of Regulatory Utility Commissioners Petition for Declaratory Ruling that State Commissions Have Authority to Require Exchange Carriers to Provide and Maintain Basic Telephone Instruments and Associated Wiring. —— FCC 2d ——, FCC 83-222, released May 12, 1983.

[38] OUT Comments, at 2-4, 18; American Speech-Language-Hearing Association (ASLHA), Reply Comments at 2.

telephone which is manufactured be hearing aid-compatible, a situation which OUT and ASLHA's proposal would create. It chose, however, only to specify locations where a compatible telephone must be placed. The legislative history expresses the statutory plan:

> The legislation focuses on those "essential telephones" to which the hearing impaired must have access if they are to function effectively in modern society. Companies are free to manufacture and to market non-compatible telephones, and businesses and consumers may purchase these instruments for use by persons who do not have hearing impairments.
>
> * * * * *
>
> Under no circumstances may the Commission designate as an essential telephone any residential telephone * * * if all the persons who would normally use it do not have hearing impairments. House Report at 9.

20. The purposes of the Act can be achieved through actions short of requiring universal production of compatible telephones. Our rules ensure that every person who requires a compatible telephone can acquire one. As noted, Congress found that a sufficient supply of compatible telephones exists to ensure this. The rules also preserve consumer and manufacturer choice concerning equipment to be purchased and manufactured.

21. In addition, we note that the approach we are taking will strengthen existing "on request" programs, by requiring carriers, if necessary, to secure hearing aid-compatible telephones, if requested by a subscriber. Merely reporting unavailability of compatible telephones would not meet the carrier's obligation to supply equipment.[39] Furthermore, uniform technical standards for hearing aid-compatibility will prevent carriers from evading responsibility by disclaiming knowledge of whether particular equipment is functionally compatible. This approach is also more likely than a requirement that telephones be compatible to be registered to achieve the statutory goals as it will not interfere with price competition and innovation in the CPE market.

3. *Operator and Directory Assistance Services Necessary for TDD Users to Access the Telephone Network*

22. AT&T has indicated that it provides TDD operator and directory assistance to customers of any carrier. (Comments at 3, Reply at 8). GTE states that it provides similar services in certain of its territories. (See Comments at 4). To ensure that hearing impaired persons have "reasonable access" to telephone service, we are requiring that carriers providing such services notify this Commission and affected states six months prior to terminating such service. Without these services, provision of TDDs could become a fruitless act. This provision allows this Commission and state regulatory agencies to consider termination proposals and determine whether termination is in the public interest. Furthermore, we are not requiring that carriers make available more sophisticated or costly services suggested by some commenters. These include call waiting, call forwarding, and relay services using intermediaries to allow conversation between persons without hearing impairments who do not have TDDs, and TDD users.[40] Such services appear to impose costs which we are unwilling to impose in light of section 610(e) of the Act. We are not precluding cooperative efforts by states and carriers, including subsidies if necessary, to provide incidental services to TDD users which go beyond the basic requirements of new section 64.603.[41] Indeed, we note that without requirements by this Commission, AT&T, some BOC's, GTE, and some Independents currently allow discounts or exemptions from charges for directory or operator assistance.

4. *Requirements that "Essential Telephones" be Hearing Aid-Compatible*

a. *Summary.*

23. Section 610(b) of the Act provides:

> [T]he Commission shall require that essential telephones provide internal means for effective use with hearing aids that are specially designed for telephone use. For purposes of this subsection, the term "essential telephones" means only coin-operated telephones, telephones provided for emergency use, and other telephones frequently needed for use by persons using such hearing aids.

The Act also provides:

> [E]xcept for coin-operated telephones and telephones provided for emergency use, the Commission may not require the retrofitting of equipment to achieve the purposes of this section. 47 U.S.C. 610(f).

To meet the mandate of subsection (b) and the restrictions of subsection (f), we are requiring that as of January 1, 1985, all newly installed "essential" telephones be hearing aid-compatible, and all incompatible coin-operated and emergency telephones be retrofitted by that date. To codify these requirements, we are adding §§ 68.4 and 68.112 to Part 68 of our Rules. We note that the Act does not require placement of new telephones where none currently exist, only that newly-installed telephones be compatible and that designated existing telephones be retrofitted.

24. Section 68.4 prescribes hearing aid-compatibility of new and existing "essential" telephones by January 1, 1985, including retrofitting of telephones not exempted by subsection (f) of the Act. While United States Independent Telephone Association (USITA) requested more time, it provided no data affirmatively demonstrating a need for a longer retrofitting period. "Hearing aid-compatibility" is defined by reference to § 68.316, which is discussed at paras. 38–41, *infra.* The Electronic Industries Association (EIA) standards adopted in section 68.316 meet the Act's mandate that hearing aid-compatibility be provided by means internal to a telephone.

b. *Categories of Essential Telephones.*

25. Section 68.112 establishes definitions of the three categories of "essential" telephones, *i.e.* coin-operated, "emergency," and "frequently needed." The subcategories adopted under the headings "emergency" and "frequently needed" telephones include telephones in places where the hearing impaired might be isolated or confined; telephones installed to contact public authority or to obtain medical assistance; credit card telephones; telephones made available to invites; telephones in workplaces; and telephones in hotel or motel rooms. These categories are consistent with the legislative history.

(1) *Coin-Operated Telephones*

26. Our requirement that coin-operated telephones be hearing aid-compatible applies to any coin-operated telephone regardless of location. This is consistent with Congressional findings that most coin-operated telephones are already hearing aid-compatible and that it is not costly to convert an

[39] States may establish reasonable standards for determining the actual availability of compatible telephones within exchange areas.

[40] Comments suggesting that we require some or all of these services include Michigan Department of Labor (Michigan), at 2–3; National Center for Law and the Deaf (National Center), at 2; Institute for Cognitive Science (ICS), at 2–4; California, at 1–2; Greater Los Angeles Council on Deafness (Los Angeles), at 4.

[41] Several commenters (Los Angeles at 4; ASLHA at 2; ICS at 1–2; Bay Area Center for Law and the Deaf (BACLAD) at 2) request that the Commission require discounts on TDD toll calls because TDDs transmit information at a much slower rate than telephones. AT&T correctly responds, however, that our Order terminating Docket No. 78–50 (Telecommunications Services for the Deaf and Hearing Impaired) concluded that further rate determinations of this nature are appropriately left to state regulatory agencies.

incompatible telephone.[42] Furthermore, a one-year deadline for retrofitting coin-operated telephones is consistent with these Congressional findings, and we encourage carriers to retrofit earlier if this is feasible. The definition of "coin-operated" contained in new § 68.112(a) should be reasonably construed to accommodate technological changes, including availability of telephones which accept and make change for paper currency. *See* GTE Comments at 11. The definition excludes telephones activated by credit cards only, which we classify as "frequently needed" telephones. See Para. 30, *infra.*[43]

(2) *Telephone Provided for Emergency Use*

27. We are adding to our rules definitions of three subcategories of "telephones provided for emergency use." These are (1) telephones provided for use in islolated areas, (2) telephones needed to signal life-threatening situations in confined institutional settings, and (3) telephones specifically installed to contact public authorities or providers of medical assistance. We note that Congress intended that non-network telephones be included in this category, *e.g.,* telephones in elevators, police call boxes, telephones in hospital rooms. The definitions of "emergency use" telephones will be contained in new § 68.112(b). Upon an affirmative showing that another location should be included in our Rules, we will consider adding new categories.

28. We are not requiring placement of an "emergency" telephone where none existed; the reference in subsection (b)(3) of the new rule to telephones "needed" to signal life-threatening or emergency situations indicates that institutions may have chosen to provide an alternative means of monitoring emergencies, including an on-duty attendant or a signalling device other than a telephone. In that case, a telephone which is also in the hospital room is not provided for emergency use and if incompatible would not have to be retrofitted. Finally, in recognition of our responsibility under section 610(e) to consider the costs and benefits of every rule we adopt herein, we find a lack of evidence showing that any "emergency telephone" requirement, including the one-year deadline in retrofitting, will be unduly costly to manufacturers, carriers, or the public.

(3) *Telephones Frequently Needed by the Hearing Impaired*

29. The remaining category of "essential" telephones is "telephones frequently needed for use by the hearing impaired." The definitions of "frequently needed" telephones, contained in § 68.112(c), include five subcategories of telephones: telephones activated by credit card or other pre-arranged credit; workplace telephones; telephones made available at places of business or in public buidings; telephones in hotel and motel rooms; and non-emergency telephones in locations where the hearing impaired may be confined, *e.g.,* hospitals. As with "emergency" telephones, Congress intended to include certain non-network telephones in this category, including internal extensions in places of business and public buildings.[44] Unlike the other two categories of "essential" telephones, not every newly installed telephone in this category need be compatible. The following sections describe the subcategories of "frequently needed" telephones. Our rules recognize that subsection (f) of the Act prohibits the Commission from requiring the retrofitting of telephones in this category.

(a) *Credit Card Telephones.*

30. The first subcategory is telephones on which calls may be paid for only by credit cards or other pre-arranged credit (or third number or reverse billing). Congress in its Report noted that AT&T and GTE projected that all credit card telephones in their territories would be hearing aid-compatible by the end of 1982.[45] AT&T represents that it has accomplished this. (Comments at A-2 thru 5). Congress concluded that, because in its view less power is needed to activate these telephones than coin-operated telephones, many credit card telephones would be removed if we required these telephones to conform to the same criterion for magnetic field strength as other "essential" telephones.[46] The Report therefore recommends that a newly-installed credit-card telephone be hearing aid-compatible unless no coin-operated telephone is readily accessible which is capable of performing the same functions as the credit card telephone.[47] We are adopting a rule which is consistent with Congress' concerns but will still ensure that compatible telephones are available in public locations.

(b) *Workplace Telephones.*

31. We are also requiring that when an employer installs a new telephone at the work station of a hearing impaired employee, that telephone must be compatible if that employee will use it in the course of work duties. Section 68.112(c)(2) contains this requirement. This requirement is consistent with the legislative history, which provides that "An employee with impaired hearing should have access to at least one compatible telephone unless his duties would not involve the use of such a telephone if it were available." H. Rpt. at 10. We cannot accept the contention by OUT (Comments at 7) that we should require all new telephones in workplaces to be hearing aid-compatible. OUT's position is inconsistent with the requirement of section 610(b) that non-emergency, non-coin-operated CPE be compatible only if frequently needed by persons with hearing impairments. In addition, we conclude that OUT's suggestion is unnecessary to achieve the purposes of the Act, which seeks to preserve consumer choice in the purchase of CPE.

(c) *Telephones for Use by Invitees.*

32. The next category of "frequently needed" telephones is telephones for use by business invitees. We shall require generally that newly-installed telephones in public buildings and places of business, which are made available to the public, be compatible, no party having demonstrated that a compatibility requirement will impose "extraordinary costs of implementation" in the locations mentioned.[48] This section does not require that a newly-installed credit card-telephone be compatible if it is in proximity to a hearing aid-compatible coin-operated telephone.

(d) *Hotel and Motel Room Telephones.*

33. The fourth category of "frequently needed" telephones is hotel and motel room telephones, for which new § 68.112(c)(4) sets forth requirements. This subcategory received considerable attention in both the legislative history

[42] *See* H. Rpt. at 9.

[43] We note that while the legislative history of the Act appears to contemplate that all telephones be registered, with registration indicating whether or not a telephone is hearing aid-compatible, H. Rept. at 12, we do not currently permit registration of coin-operated telephones. As all coin-operated telephones will have to be hearing aid-compatible, their omission from the registration program is of little consequence in terms of the purposes of the Act. An application for registration of a coin-operated telephone is, however, currently under consideration by this Commission. Application of Viking Electronics, Inc., File No. 100-CX-83 (October 26, 1982). If we decide to register coin-operated telephones, applications will be required to show hearing aid-compatibility, and registrants will be subject to the same conditions concerning hearing aid-compatibility as registrants of other "essential" telephones.

[44] *See* H. Rpt. at 10

[45] *Id.* at 11.

[46] *See id.* at 6, 9.

[47] *Id.* at 9.0

[48] *See id.* at 10.

of the Act and in the comments received in this proceeding. OUT (Comments at 7, Reply Comments at 9–11], ASLHA (Comments at 4), and the Communications Workers of America (Reply Comments at 3) demand universal compatibility of hotel and motel room telephones. OUT in particular argues that this would be a less costly and less confusing requirement than alternatives which were proposed by other commenters and considered by Congress. Congress, however, did not believe that universal compatibility in hotel and motels is necessary. The Report states:

> As an alternative to providing compatible telephones in every room, a hotel may set aside a reasonable number of rooms (under a formula that the regulations will specify) for the hearing impaired. Alternatively, the hotel owner may maintain a reasonable supply of compatible instruments and install them at the request of a guest who uses a hearing aid. H. Rpt. at 10.

34. The Chairman of the House Committee which had jurisdiction over the Act, Representative Wirth, confirmed in debate that "there is no requirement that every telephone in the lobby or every [hotel or motel] room would have to have telephones that are compatible with hearing aids." He proposed that "1 out of 10 rooms" should have a compatible telephone.[49] Representative Wirth referred to the above-quoted portion of the House Report as providing "several examples of the maximum extent of regulation" by the Commission," *i.e.*, prohibiting the Commission from requiring that every new hotel or motel telephone be hearing aid-compatible.[50]

35. We conclude as Congress did that we need not require that all telephones in hotel and motel rooms be compatible. Any of several approaches will ensure that hearing aid users are accommodated by hotels and motels. Section 68.112(c)(4) therefore sets forth several alternatives for compliance. Any hotel or motel which has incompatible telephones in its rooms need not install new telephones or retrofit existing telephones. When a hotel or motel does install a new telephone or replaces an existing one, it may comply with the Act either by installing a compatible telephone or taking other actions specified in our Rules. Once a hotel or motel has attained compliance in ten percent of its rooms, it may install any type of equipment it chooses. We reject, however, comments which suggest that the maintenance of a supply of adapters which couple externally with non-compatible handsets to enable use of those handsets by hearing aid wearers would comply with the Act.[51] The plain language of section 610(b) requires that essential telephones contain internal means for compatibility with hearing aids. Accordingly, compliance with § 68.112(c)(4) can be achieved only by provision of internally compatible telephones as specified therein.

(e) *Non-Emergency Telephones in Locations Where the Hearing Impaired May be Confined.*

36. The final category of "frequently needed" telephones includes telephones in locations where the hearing impaired may be confined but which are not needed to signal the presence of a life-threatening situation. This category includes, but is not limited to, telephones in rooms in hospitals, convalescent homes, residential health care facilities for senior citizens, and prisons. As indicated in para. 28, *supra*, if a hearing impaired person in such a location has access to an alternative means of signalling an emergency, a telephone in such a room is not provided for emergency use. It would, however, be "frequently needed by the hearing impaired." Therefore, existing telephones in such locations need not be retrofitted, but telephones installed after January 1, 1985, must be hearing aid-compatible.

(f) *Public Availability of Telecommunications Devices for the Deaf.*

37. An additional issue which is most logically dealt with here is the suggestion made by several commenters that the Commission require the placement of TDDs, or coin telephone booths which can accommodate them, in public locations.[52] We will not prescribe such a requirement in this proceeding. Subsection (b) of the Disabled Act is limited by its terms to telephones, not TDDs. No section of the Act affirmatively requires placement of an instrument whether a telephone or TDD, and, in view of the substantial costs that such a requirement might impose on the public and those governmental and private entities which control such locations, we decline to do so here. As we noted in *Telecommunications Services for the Deaf and Hearing Impaired*,[53] however, there is nothing to prevent a state regulatory agency from requiring subsidization of such equipment pursuant to section 610(g) of the Act.[54] We therefore leave this matter for resolution between states, carriers and suppliers of TDDs.

5. *Adoption of Uniform Technical Standards for Hearing Aid Compatibility*

38. Congress found in section 2 of the Act that technical standards for compatibility between hearing aids and telephones are necessary to assure that the needs of the hearing impaired are met. Section 610(c) of the Act provides that "the Commission shall establish or approve such technical standards as required to enforce this section." The Report indicates that such standards must be nationally uniform, preempting any conflicting state requirements. The Commission may adopt standards produced by industry agreement or adopt other standards if industry fails to agree or the industry standard does not lead to satisfactory results. The legislative history, however, reflects Congress' concern that our technical standards not freeze technology by specifying a permissible design and excluding potentially superior alternatives. In fact Congress made plain that the Commission should expeditiously accept any new design which is compatible with existing technologies and provides results which are equivalent or superior to those achieved by an existing standard.[55]

39. Comments filed in this proceeding by the Electronic Industries Association (EIA), a trade association representing manufacturers of telephone equipment, contain proposed technical standards developed jointly by EIA and the Hearing Industries Association (HIA), entitled "Magnetic Field Intensity Criteria for Telephone Compatibility with Hearing Aids." Commenters agreed that these standards will ensure that complying telephones will be usable with hearing aids equipped with telecoils. Consistent with Congress' suggestion that we adopt industry-developed, effective standards, we are therefore incorporating these standards into Part 68, at § 68.316. The standards enable manufacturers and suppliers to be certain that the telephones they produce and install are functionally

[49] 123 Cong. Rec. at H 9485 (Daily ed., Dec. 13, 1982).

[50] 123 Cong. Rec. at H 10355 (Daily ed., December 18, 1982). *Accord*, Comments of Representative Thomas Bliley, Jr., filed in this docket (June 15, 1983).

[51] *See* GTE Comments at 8; North American Telephone Association (NATA) Commnets at 7; Electronic Industries Association (EIA) Comments at 5.

[52] *E.g.*, Scott Rafferty (Rafferty) Comments at 6; National Center, Comments at 2; BACLAD, Reply Comments at 2; Michigan, Comments at 3.

[53] CC Docket No. 78–50, —— FCC 2d ——, FCC 83–177, released May 4, 1983.

[54] *Id.* at paras. 21–24.

[55] H. Rpt. at 11. The Report specifically indicates that Congress chose not to specify "inductive coupling" as the only acceptable method of hearing aid compatibility. *Id.* at 8.

compatible with hearing aids designed for telephone use. We note that the new rule cross-references requirements we are adopting for labelling of telephone packaging. See paras. 42–44, *infra*. This cross-reference will disclose to potential purchasers the limits the Act places on the use of incompatible telephones in "essential" locations.

40. Accordingly, we are adopting the standard recommended by EIA.[56] We are not precluding EIA from developing new standards or revising its recommended standards to reflect changes in technology. Henceforth, however, the Commission, not industry, will determine whether to amend the standard adopted in our Rules. Furthermore, we will not freeze technology by specifying a particular design for hearing aid-compatibility; thus we will entertain a petition by any person, supported by technical data, which demonstrates that a particular telephone may be used as "essential" because a technological alternative to inductive coupling makes that telephone hearing aid-compatible by means internal to the telephone.

41. While OUT supports the EIA standards, it also argues that prototype telephones should be subject to laboratory tests by a federal testing bureau, or to field tests by consumers, before the Commission enacts technical standards. (OUT Comments at 10–12). It bases this argument upon a statement in the legislative history that the Commission should reject an industry-developed compatibility standard if consumers establish that the standard fails to provide satisfactory results.[57] We will not order such tests as a prerequisite to adopting the EIA standard. We would expect, however, that every manufacturer will rigorously test all new equipment and we are requiring that all Part 68 registrations of telephones represented to be compatible be backed by affirmative data to be made available to the Commission on request. We will of course review carefully any complaints that the standard we are adopting is insufficient, and take prompt remedial action, if warranted.[58]

[56] Because of the broad consensus on the standards proposed by EIA/HIA, we find it unnecessary for the Common Carrier Bureau to convene meetings on this subject as we had suggested in the Notice, para. 25.

[57] H. Rpt. at 11.

[58] On November 25, 1983, OUT submitted unauthorized supplementary comments which criticize some aspects of the EIA standards. In view of the imminent deadline for issuing regulations to implement the Act, we will not address further the question of the adequacy of the standards, but will, as noted, take remedial action if warranted based upon consumer complaints.

6. *Labelling of Telephone Packaging and Other Notification Concerning Hearing Aid Compatibility*

a. *Requirements.*

42. Section 610(d) of the Act provides that

> The Commission shall establish such requirements for the labelling of packaging materials for equipment as are needed to provide adequate information to consumers on the compatibility between telephones and hearing aids.

Requirements for labelling CPE packaging must "explain, in a clear understandable manner, whether and how persons with impaired hearing may use such equipment." H. Rpt. at 12. The Act does not require labelling of equipment itself. However, the Report notes that "it would be desirable for persons using hearing aids to be able to identify noncompatible telephones • • • outside their homes." *Id.*

43. To meet the mandate of subsection (d) of the Act and to ensure that purchasers of new incompatible telephones are aware that such telephones may not be installed in locations causing them to be "essential," [59] we are requiring labelling of external packaging as the Act prescribes, and directing manufacturers to include written disclosure statements with new telephones delivered unpackaged, because equipment used in workplaces, hospitals, places of business, etc., is often delivered unpackaged. These requirements are incorporated in new § 68.224 of our Rules, which provides manufacturers six months after the rules are issued to comply. All new telephones which are incompatible with hearing aids must be accompanied by written information concerning limitations on use as "essential" pursuant to section 610(b) of the Act. Although these disclosure statements may not reach the end user, they will ensure that the purchaser is aware of his obligations to end users and can make informed purchasing decisions. These requirements will undoubtedly impose some costs on manufacturers of CPE. But since labelling and instructions are generally used in any event, the costs will largely be those associated with a change in labelling and instructions, and not continuing ones. Congress, as we have noted, has determined that the benefits of enabling hearing impaired persons to function in society, including reduced institutionalization and increased employment, outweigh these costs. See para. 9, *supra*.

[59] *See id.* at 12.

b. *Identification of Compatibility of Non-Residential Telephones.*

44. We have considered but rejected proposals by several commenters that we require some form of marking or labelling on the surface of telephones to indicate whether they are hearing aid compatible,[60] and a proposal that we require signs on or near pay telephones indicating availability of a hearing aid-compatible telephone.[61] We see no reason to require signs on pay telephone booths because all coin-operated telephones will be compatible pursuant to section 610(b) of the Act, and § 68.112 of our Rules. Furthermore, while we agree that some means of identifying compatibility of telephones outside the home would help ensure that hearing aid users will feel free to travel, the record shows that most coin-operated telephones, which are already generally compatible, are already marked with a blue "grommet" (*i.e.* rubber molding on the junction of the cord and receivers),[62] and most public use telephones will become compatible by operation of amendments to Part 68 of our Rules adopted by this Order.[63] We are not, of course, discouraging voluntary marking of telephone equipment or designations of public availability of compatible telephones in any manner which may aid hearing impaired persons.

7. *Provision of "Specialized CPE" for Persons With Impaired Hearing, Speech, Vision or Mobility*

a. *Statutory Provision.*

45. Section 610(g) of the Act provides:

> Any common carrier or connecting carrier may provide specialized terminal equipment needed by persons whose hearing, speech, vision, or mobility is impaired. The State commission may allow the carrier to recover in its tariffs for regulated service reasonable and prudent costs not charged directly to users of such equipment.

As we have noted (para. 4, *supra*), we concluded in our Order denying AT&T's request to detariff "specialized CPE" that the Act is intended to facilitate the efforts of states and carriers to meet the communications needs of disabled persons. Therefore, we have added rules which modify *Computer II*, to make clear that states may continue

[60] Rafferty, Comments at 15; Michigan, Comments at 5; OUT, Comments at 14.

[61] Michigan, Comments at 3.

[62] AT&T Comments at 12; USITA Comments at 7

[63] In addition we note that the requirements of new § 64.603 requiring carriers annually to include billing inserts containing information on the Act's requirements, will ensure that consumers are aware of requirements that "essential" telephones be compatible, and will explain the significance of any non-verbal form of labelling or marking adopted by a carrier including "grommets," symbols, or the like

subsidized offerings of "specialized CPE" on a tariffed or detariffed basis.[64] The Commission recently required that any BOC which offers CPE after divestiture must do so through structural separation.[65] This requirement, however, does not affect carriers' ability to offer specialized CPE on an unseparated basis. The Act does not specifically define specialized CPE (which is referred to in the Act as "specialized terminal equipment"). The Report gives guidance, however, noting that regulated services may subsidize only equipment actually needed by disabled persons to communicate, or by other persons who communicate regularly with disabled persons.[66] The Report also gives certain examples of specialized terminal equipment including TDDs, artificial larynxes, and hands-free telephones, *Id.* at 3.

b. *Definition of Specialized CPE.*

46. We are modifying our Rules to allow states and carriers to tariff specialized CPE for persons with impaired hearing, speech, sight or mobility. Therefore we are adding Section 64.601(a) to our Rules. That provision recognizes that carriers may provide specialized CPE to disabled persons or to their associates. Specialized CPE encompasses any CPE which a person with a particular disability needs to access the network without assistance, or a non-disabled person needs to communicate with a disabled person, *e.g.*, a TDD. In other words, a particular type of CPE may not be provided under tariff to a person who would be able to utilize the network or contact a disabled person without it. *E.g.*, an amplifying handset may not be provided under tariff to a person whose hearing is unimpaired. The definition excludes basic hearing aid-compatible telephones. The Act does not specifically address the inclusion of hearing aid-compatible telephones as part of specialized terminal equipment. Congress found that the marketplace is producing an ample supply of such telephones at affordable prices.[67] Congress' concern was directed to other more costly equipment which is produced on a relatively small scale, and which might escalate in price in a deregulated environment. In such cases disabled persons would be hampered by unsubsidized prices of equipment. Such concerns do not apply to basic hearing aid-compatible telephones.[68] Therefore subsidies are unnecessary for such telephones. Moreover, as hearing aid-compatible telephones are expected to be almost universally available, tariffed provision of such telephones would undercut this Commission's *Computer II* policies.

47. The regulation does not preclude carriers from offering, or states from approving, offering of TDDs or other specialized CPE under any subsidy method which will effectuate the goals of the Act, including tariffing. In fact, this Commission encourages the continuation of charitable contributions, by carriers, or equipment such as TDDs and artificial larynxes, a subsidy method which may prove less distortive of telephone rates and less detrimental to ratepayers than increasing toll or exchange rates or imposing surcharges on bills for exchange services. In order to encourage innovation and avoid freezing technology, our new rule includes a list of examples but does not specify every type of "specialized CPE" which may be permissibly offered to disabled persons.[69] States can allow equipment other than the examples specified to be provided under tariff consistent with the letter and spirit of the Act and our Rules. We trust that such authority will not be abused, and we are prepared to take actions to prevent such abuse. See para. 49, *infra.*

48. Finally, we have considered, and we reject, suggestions by some commenters that the Commission adopt a definition of specialized CPE which would allow subsidized provision of only those products whose sole or main purpose is to benefit the disabled.[70] Subsection (g) of the Act refers to equipment "needed" by the disabled. Equipment may be needed by the disabled regardless of whether it was designed with them in mind, *e.g.* speakerphones. We find, moreover, that the problems of attempting to define specialized CPE by the nature of particular equipment, *i.e.*, whether a product is "designed" for disabled persons or only incidentally beneficial to them, are almost insoluble in some cases.

c. *Limitations on Provision of Specialized CPE.*

49. States and carriers must be cognizant that the Act does not authorize carriers to make a wholesale re-entry into the provisions of regulated CPE. We have considered circumstances in which we would take action against state programs which go further than permitted by the Act. Among the circumstances in which we might act are situations outlined by Representative Wirth. These include: (1) A tariff includes equipment that is not specialized, *i.e.*, will not enable a disabled person to use generally available telecommunications services (or those services that have been specially designed for their use) effectively or without assistance; (2) a tariff makes equipment which might otherwise be designated "specialized" available to persons who do not require it by virtue of a physiological impairment (*e.g.*, a speakerphone provided to a non-disabled person); (3) a tariff for regulated services includes costs of providing equipment that are not "reasonable and prudent."[71] One method of preventing abuse of the subsidy mechanism which is currently employed in several states is certification that a consumer needs a particular device to effectively obtain telephone service, by professionals familiar with particular disabilities, before the customer may obtain one at subsidized rates. In any event, we are confident that the states, which have the incentive to hold down rates for telephone services for all ratepayers, will assure that abuses in the provision of specialized CPE do not occur.

d. *Incompatibility of ASCII and Baudot TDDs.*

50. As we recognized in the Notice (para. 17), the termination of CC Docket No. 78-50 left unresolved the question of how to rectify the incompatibility between TDDs using the ASCII/103 (ASCII) and Baudot/Weitbrecht (Baudot) standards. The record in this proceeding does not provide a basis for a uniform solution to this problem at this time. AT&T has indicated that development of an affordable modem allowing interface between the two formats is feasible, and that the Electronic Industries Association is

[64] Although we have left to the states decisions regarding the appropriate method for subsidizing specialized CPE, and we are required to delegate to the states authority to enforce certain regulations, *see* para. 51, *infra*, we are hopeful that carriers will continue current programs to aid the disabled. Moreover, we encourage new initiatives by carriers and states to assist disabled ratepayers.

[65] Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services, CC Docket No. 83-115,——FCC 2d——, FCC 83-552, adopted November 23, 1983.

[66] H. Rpt. at 13.

[67] H. Rpt. at 11.

[68] *Id.*

[69] In Addition to requirements for provision of specialized CPE, states may find it appropriate to issue reasonable requirements for carries to notify customers of the availability of such products and incidental services which enable customers to utilize such products.

[70] *See* NATA Comments at 11; USITA Comments at 8; Comdial Comments; GTE Comments at 18; Michigan Comments at 5; UTS Comments at 5.

[71] 123 Cong. Rec. at H9484 (Daily ed., Dec. 13, 1982).

exploring a uniform standard for interface between ASCII and Baudot TDDs. (Comments at 12). We encourage voluntary developments in this area and would consider, only as appropriate, formal adoption of a uniform standard agreed to by consensus, as was the case with the hearing aid compatibility standard we are adopting herein. At this time, however, we are limiting regulation of this situation to requirement that carriers which supply TDDs, provide TDD users, on request, with sufficient information to make informed purchasing decisions. *See* § 64.601(b).

51. The growing availability of moderate-cost home computer equipment meeting the ASCII/103 standard suggests that adopting that standard for telecommunications equipment for the deaf might decrease equipment costs for deaf customers and greatly expand the community of users to which deaf persons have access. While the Commission could conceivably adopt ASCII/103 as a standard with a specified deadline for phasing out dual-format or Baudot-only TDDs, the immediate costs of conversion or replacement of obsolescent existing equipment warrant caution in taking short-term actions unjustified by the record. The states will have power to require provision of TDDs using a particular standard, and can develop, in conjunction with carriers, any needed subsidization plans for conversion of equipment or retraining of Baudot users. We note, for example, that California's TDD subsidy program requires provision of dually compatible TDDs, with customers required to pay only a small surcharge for a dually compatible TDD if such a instrument is not cost-competitive with Baudot-only TDDs.[72] This Commission remains receptive to efforts by industry and representatives of the hearing impaired to reach a nationwide solution to the ASCII/Baudot problem.

8. *Enforcement of Regulations Issued Under Subsections (a) and (b) of the Act*

52. Section 610(h) of the Act provides that

> The Commission shall delegate to each state commission the authority to enforce within such State compliance with the specific regulations that the Commission issues under subsections (a) and (b), conditioned upon the adoption and enforcement of such regulations by the State commission.

[72] Investigation to Provide a Program for the Furnishing of Telecommunications Devices to the Deaf and Severely Hearing Impaired, Decision No. 92871, at 2-3 (Calif. Publ. Util. Com'n, April 7, 1981).

Congress found that it would be more cost-effective for the states rather than this Commission to handle disputes arising under the Act. Therefore authority to enforce subsections (a) and (b), requiring "reasonable access" and compatibility of "essential" telephones, is delegated to any state commission which adopts the regulations issued in this proceeding. New §§ 68.414 and 64.604, which delegate responsibility for several of the rules we are enacting, prescribe a period for voluntary compliance by individuals or carriers before a state commences a formal enforcement action.[73] The regulations delegating enforcement responsibilities also underscore that this Commission retains jurisdiction to enforce all sections of the Act if a state declines enforcement responsibilities. Our Rules, however, make clear that a state may properly decide not to act on a complaint which lacks merit as long as the customer is properly notified.[74]

IV. Regulatory Flexibility Act—Final Analysis

A. Need for and Objectives of Rules

53. These rules are being issued as directed by the Telecommunications for the Disabled Act of 1982, Pub. L. 97-410 (to be published at 47 U.S.C. 610). Through these rules, the Commission seeks to comply with the congressional purposes and provisions contained in that legislation. In order to comply with those purposes, this Commission is adopting regulations to ensure reasonable access to telephone service by the hearing impaired, including enacting technical standards for certification that essential telephones are hearing aid-compatible; defining which telephones are "essential"; enacting standards for labelling packaging and otherwise notifying the public of whether telephones are or are not hearing aid-compatible; and requiring telephone carriers to provide hearing impaired persons with hearing aid-compatible telephone if otherwise unavailable. In addition, the rules define circumstances under which specialized equipment needed by the hearing impaired and other disabled persons may be provided pursuant to state public utility regulation, and prescribe that carriers notify regulatory commissions if the carrier plans to discontinue transmission services necessary to enable deaf persons to use the network.

54. The Notice of Proposed Rulemaking in this proceeding (Para. 44) solicited comments on the Initial Regulatory Flexibility Analysis, and specified that such comments be contained under separate headings from comments relating to the general issues. No such comments were received. Nevertheless, in order to discharge our duty under the Regulatory Flexibility Act, we will proceed to discuss the pertinent costs arising from actions we are taking to implement the Telecommunications for the Disabled Act, and alternatives to those actions which we considered and rejected.

B. Analysis of Specific Actions

1. *Adoption of Technical Standards for Hearing Aid Compatibility*

55. We are requiring that telephones, in order to be designated "hearing aid-compatible" and therefore usable as "essential" telephones, comply with a uniform technical standard incorporated in our Rules. This standard places no burden on any person because it does not of itself require any company to manufacture telephones but merely establishes specifications to be met by a company which chooses to do so. Furthermore, the standard represents a consensus of industry members based upon currently prevalent technology. We were not presented with a viable alternative to the particular standard we are adopting.

2. *Requirements That Essential Telephones be Hearing Aid-Compatible*

56. We are requiring that after a specified date only hearing aid-compatible telephones be installed for use as "essential" telephones and that existing telephones which are coin-operated or provided for emergency use be retrofitted for compatibility by that date. There is generally no alternative to either requirement, both of which are mandated by the Act. Where the Act permitted an alternative to requiring that every telephone in a particular category of "essential" telephones be hearing aid-compatible, we have adopted such an alternative, *i.e.*, for credit card telephones and telephones in hotel and motel rooms. Certain commenters proposed longer deadlines for the retrofitting of coin-operated and emergency use telephones. We rejected those alternatives because no commenter quantified the expense to

[73] *See* Rpt. at 14.

[74] We further note a commenter's suggestion that this Commission, in order to facilitate public scrutiny of carrier compliance, act as a repository for carrier tariff filings for "specialized CPE" and accountings for sales of such products. Rafferty, Comments at 25. We believe, however, that the benefits of such requirements would not justify the resulting paperwork burden, both to the carriers and to the Commission. Therefore we are not adopting such a requirement.

which the shorter deadline we are adopting would subject providers of those telephones.

3. *Requirements for Package Labelling and Inserts to Indicate Hearing Aid Compatibility and Provide Other Information*

57. These requirements will increase manufacturers' production costs to some extent. However, there is no alternative to requiring package labelling, which is required by the Act, and therefore no alternative to package inserts which replace labels for unpackaged telephones. Package inserts informing a customer that an incompatible telephone may not be used in "essential" circumstances is required to effectuate the Congressional intent that the purchaser be informed of limitations on the use of incompatible telephones. Congress found such an approach to be preferable to requiring that every telephone manufactured be hearing aid-compatible. Package inserts are also less costly than alternatives we considered and rejected, such as marking the surface of an incompatible telephone.

4. *Provision of Specialized CPE*

58. The provision in our Rules relating to specialized CPE merely recognizes that the Act preserves certain rights which states and carriers already largely possess. It creates no rights or obligations in itself and therefore is not burdensome to any carrier or manufacturer.

5. *Provision of Information Concerning Usage of ASCII and Baudot TDDs*

59. We are requiring that carriers which provide TDDs are also required to provide, on request, information enabling customers to make informed decisions in purchasing or leasing a TDD. The costs of such a requirement, if any, should be minimal. The Commission considered but rejected more rigorous and expensive alternatives for rectifying problems stemming from incompatibility of TDD formats, including adoption of a standard format which would require costly equipment modification or removal of products from the market.

6. *Requirement that Exchange Carriers Provided Hearing Aid-Compatible Telephones if Otherwise Unavailable*

60. This provision places some expense on exchange carriers, who may choose to comply through any combination of maintenance of inventory, procurement of instruments as needed, or conversion of existing instruments. Such costs can, however, be recouped through mark-up on the retail price of telephones and through service charges for installations of telephones. The only viable alternatives for ensuring that every person needing a compatible telephone can acquire one, those of making hearing aid-compatibility a prerequisite to Part 68 registration of telephones, or of designating as "essential" all residential telephones used by hearing impaired individuals, would be more onerous.

7. *Notification by Carriers Seeking to Terminate TDD Operator and Directory Assistance*

61. This requirement does not impose costs on carriers, who would in most instances have to seek regulatory permission to terminate such services in any event. It does not require the offering of new services, nor mandate continuation of services which may be too costly for a particular carrier to maintain.

C. Flexibility Analysis Conclusion

62. We conclude that the actions we are taking herein comply with the purposes of the Regulatory Flexibility Act. In many instances our regulations do no more than codify requirements expressly imposed by Congress. Where alternative resolutions to particular problems were presented, we have chosen the less costly alternative unless a more costly alternative would clearly be more effective in meeting the needs of disabled customers. Finally, in many instances, both large and small carriers and manufacturers will be able to include the expenses of actions required by our regulations as part of revenue requirements for regulated services or by setting their own price on unregulated products and services.

V. Conclusion

63. Accordingly, it is ordered, pursuant to Sections 4(i), 4(j) of the Communications Act of 1934, as amended (47 U.S.C. 154(i) and 154(j)), and pursuant to the Telecommunications for the Disabled Act of 1982, Pub. L. 97-410 (to be published at 47 U.S.C. 610), that Parts 64 and 68 of the Commission's Rules and Regulations are amended as specified in Appendix C. These amendments become effective 30 days after publication of the report and order in the Federal Register.

64. It is further ordered that the Secretary shall cause this Report and Order and the Final Regulatory Flexibility Analysis contained herein to be published in the Federal Register and send a copy to the Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (5 U.S.C. 601, *et. seq.* (1980)).

65. It is further ordered that this proceeding is terminated.

Note.—Due to the ongoing effort to minimize publishing costs, Appendices A and B, summaries of comments, will not be printed herein. However, interested parties may review those comments in the FCC Dockets Branch, RM. 239, 1919 M. St., N.W. Washington, D.C. 20554.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix C

PART 68—[AMENDED]

Title 47, Part 68 of the Code of Federal Regulations is amended as follows:

1. By revising § 68.1 to read as follows:

§ 68.1 Purpose.

The purpose of the rules and regulations in this part is to provide for uniform standards for the protection of the telephone network from harms caused by the connection of terminal equipment thereto, and for the compatibility of hearing aids and telephones so as to ensure that persons with hearing aids have reasonable access to the telephone network.

2. By adding the following § 68.4 to Subpart A, to read as follows:

§ 68.4 Hearing aid-compatible telephones.

Except as provided in § 68.112(c) (1) and (4), every telephone installed on or after January 1, 1985 which is subject to § 68.112 must be hearing aid-compatible. Every telephone subject to § 68.112 (a) and (b) installed prior to January 1, 1985 shall be modified or replaced, as necessary, in order to be hearing aid-compatible by January 1, 1985. A telephone is hearing aid-compatible if it meets the criteria set forth in § 68.200(i).

3. By adding the following § 68.112 to Subpart B:

§ 68.112 Hearing aid-compatibility.

(a) *Coin telephones.* All new and existing coin-operated telephones, whether located on public property or in a semi-public location (*e.g.* drugstore, gas station, private club).

(b) *Emergency use telephones.* Telephones "provided for emergency use" include the following:

(1) Telephones in places where a person with impaired hearing might be

isolated in an emergency, including, but not limited to, elevators, automobile, railroad or subway tunnels, and highways.

(2) Telephones specifically installed to alert emergency authorities, including, but not limited to, policy or fire departments or medical assistance personnel.

(3) Telephones needed to signal life-threatening or emergency situations in confined settings, including, but not limited to, rooms in hospitals, residential health care facilities for senior citizens, convalescent homes, and prisons. A telephone is not needed to signal life-threatening or emergency situations if an alternative means of signalling such a situation is available.

(c) *Telephones frequently needed by the hearing impaired.*

(1) Any telephone on which calls may only be paid for by credit card or other pre-arranged credit. Each such telephone must be hearing aid-compatible unless a hearing aid-compatible coin-operated telephone providing similar services is nearby and readily available.

(2) Any telephone made available at the work station of a hearing impaired employee for use by that employee in his or her employment duty. An employee's "work station" is defined as the location within a workplace where that employee is usually found in the course of his or her employment duties.

(3) Any telephone, including internal extensions and telephones restricted to local calling areas, made available for use by the public in places of business or buildings in which visits by the public are reasonably expected. Examples include, but are not limited to, telephones located in lobbies of hotels or apartment buildings; telephones in stores, which are used by patrons to order merchandise; telephones in public transportation terminals which are used to call taxis or to reserve rental automobiles.

(4) Any telephone in a hotel or motel room. *Provided that,* if at least ten percent of the rooms in a hotel or motel are equipped to accommodate a hearing impaired customer, the hotel or motel need not purchase or install a compatible telephone when it replaces a telephone. A room is equipped to accommodate a hearing impaired customer if (i) it contains a permanently installed hearing aid-compatible telephone; or (ii) it contains a telephone which will accept a plug-in hearing aid-compatible handset, which shall be provided to the hearing impaired customer by the hotel or motel; or (iii) the room contains a jack into which a hearing aid-compatible telephone provided to the customer by the hotel or motel may be plugged (*i.e.*, in addition to a permanently installed telephone which is not hearing aid-compatible). *Provided further that,* if fewer than ten percent of the rooms in a hotel or motel are hearing aid-compatible, when replacing a telephone the hotel or motel must, until the ten percent minimum is reached: (A) replace it with a hearing aid-compatible telephone, *or* (B) procure and maintain a plug-in hearing aid-compatible telephone handset which it will provide to a hearing impaired customer upon request at check-in.

(5) Any telephone in the locations listed in § 68.112(b)(3) in which an alternative means of signalling a life-threatening or emergency situation is available.

4. Section 68.200 is amended by adding a new paragraph (i), to read as follows:

§ 68.200 Application for equipment registration.

* * * * *

(i) Any application for registration or modification of the registration of a telephone, filed on or after March 1, 1984, shall state whether the handset complies with Section 68.316 of these rules (defining hearing aid compatibility), or state that it does not comply with that section. A telephone handset which complies with Section 68.316 shall be deemed a "hearing aid-compatible telephone" for purposes of Section 68.4.

5. Section 68.218 is amended by adding paragraph (b)(5) and by revising the flush (final sentence) sentence at the end of paragraph (b) to read as follows:

§ 68.218 Responsibility of grantee of equipment registration.

* * * * *

(b) The grantee or its agent shall provide to the user of the registered equipment the following:

* * * * *

(5) For a telephone which is not hearing aid-compatible, as defined in § 68.316 of these Rules:

(i) Notice that FCC rules prohibit the use of that handset in certain locations; and

(ii) A list of such locations (see Section 68.112).

A telephone company which provides and installs the registered equipment need only provide the user with the information required in paragraphs (b)(1), (b)(3) and (b)(5) of this section.

6. By adding to Subpart C the following § 68.224:

§ 68.224 Notice of hearing aid compatibility.

Every telephone offered for sale to the public on or after June 1, 1984, whether previously-registered or newly-registered, shall:

(a) Contain in a conspicuous location on the surface of its packaging a statement as to whether or not the telephone is hearing aid-compatible, as is defined in section 68.316 of these Rules, or if offered for sale without a surrounding package, shall be accompanied by a written statement as to whether or not the telephone is hearing aid-compatible, as is defined in Section 68.316 of these Rules; and

(b) Be accompanied by instructions in accordance with § 68.218(b)(5) of the Rules.

7. By adding to Subpart D the following § 68.316.

§ 68.316 Hearing aid compatibility: technical standards.

A telephone handset is hearing aid-compatible if it complies with the following standard, published by Electronic Industries Association, copyright 1983, and reproduced by permission of Electronic Industries Association:

Electronic Industries Association Recommended Standard RS-504 Magnetic Field Intensity Criteria for Telephone Compatibility With Hearing Aids

[Prepared by EIA Engineering Committee TR-41 and the Hearing Industries Association's Standards and Technical Committee]

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Magnetic Field Intensity Criteria for Telephone Compatibility With Hearing Aids

(From EIA Standards Proposal No. 1652, formulated under the cognizance of EIA TR-41 Committee on Voice Telephone Terminals

and the Hearing Industries Association's Standards and Technical Committee.)

1 Introduction

Hearing-aid users have used magnetic coupling to enable them to participate in telephone communications since the 1940's. Magnetic pick-ups in hearing-aids have provided for coupling to many, but not all, types of telephone handsets. A major reason for incompatibility has been the lack of handset magnetic field intensity requirements. Typically, whatever field existed had been provided fortuitously rather than by design. More recently, special handset designs, e.g., blue grommet handsets associated with public telephones, have been introduced to provide hearing-aid coupling and trials were conducted to demonstrate the acceptability of such designs. It is anticipated that there will be an increase in the number of new handset designs in the future. A standard definition of the magnetic field intensity emanating from telephone handsets intended to provide hearing-aid coupling is needed so that hearing-aid manufacturers can design their product to use this field, which will be guaranteed in handsets which comply with this standard.

1.1 This standard is one of a series of technical standards on voice telephone terminal equipment prepared by EIA Engineering Committee TR-41. This document, with its companion standards on Private Branch Exchanges (PBX), Key Telephone Systems (KTS), Telephones and Environmental and Safety Considerations (Refs: A1, A2, A3 and A4) fills a recognized need in the telephone industry brought about by the increasing use in the public telephone network of equipment supplied by numerous manufacturers. It will be useful to anyone engaged in the manufacture of telephone terminal equipment and hearing-aids and to those purchasing, operating or using such equipment or devices.

1.2 This standard is intended to be a living document, subject to revision and updating as warranted by advances in network and terminal equipment technology and changes in the FCC Rules and Regulations.

2 Scope

2.1 The purpose of this document is to establish formal criteria defining the magnetic field intensity presented by a telephone to which hearing aids can couple. The requirements are based on present telecommunications plant characteristics at the telephone interface. The telephone will also be subject to the applicable requirements of EIA RS-470, Telephone Instruments with Loop Signaling for Voiceband Applications (Ref: A3) and the environmental requirements specified in EIA Standards Project PN-1361, Environmental and Safety Considerations for Voice Telephone Terminals, when published (Ref: A4).

Telephones which meet these requirements should ensure satisfactory service to users of magnetically coupled hearing-aids in a high percentage of installations, both initially and over some period of time, as the network grows and changes occur in telephone serving equipment. However, due to the wide range of customer apparatus and loop plant and dependent on the environment in which the telephone and hearing aid are used, conformance with this standard does not guarantee acceptable performance or interface compatibility under all possible operating conditions.

2.2 A telephone complies with this standard if it meets the requirements in this standard when manufactured and can be expected to continue to meet these requirements when properly used and maintained. For satisfactory service a telephone needs to be capable, through the proper selection of equipment options, of satisfying the requirements applicable to its marketing area.

2.3 The standard is intended to be in conformance with Part 68 of the FCC Rules and Regulations, but it is not limited to the scope of those rules (Ref: A5).

2.4 The signal level and method of measurement in this standard have been chosen to ensure reproducible results and permit comparison of evaluations. The measured magnetic field intensity will be approximately 15 dB above the average level encountered in the field and the measured high-end frequency response will be greater than that encountered in the field.

2.5 The basic accuracy and reproducibility of measurements made in accordance with this standard will depend primarily upon the accuracy of the test equipment used, the care with which the measurements are conducted, and the inherent stability of the devices under test.

3 Definitions

This section contains definitions of terms needed for proper understanding and application of this standard which are not believed to be adequately treated elsewhere. A glossary of telephone terminology, which will be published as a companion volume to the series of technical standards on Telephone Terminals For Voiceband Applications, is recommended as a general reference and for definitions not covered in this section.

3.1 A telephone is a terminal instrument which permits two-way, real-time voice communication with a distant party over a network or customer premises connection. It converts real-time voice and voiceband acoustic signals into electrical signals suitable for transmission over the telephone network and converts received electrical signals into acoustic signals. A telephone which meets the requirements of this standard also generates a magnetic field to which hearing-aids may couple.

3.2 The telephone boundaries are the electrical interface with the network, PBX or KTS and the acoustic, magnetic and mechanical interfaces with the user. The telephone may also have an electrical interface with commercial power.

3.3 A hearing aid is a personal electronic amplifying device, intended to increase the loudness of sound and worn to compensate for impaired hearing. When equipped with an optional inductive pick-up coil (commonly called a telecoil), a hearing aid can be used to amplify magnetic fields such as those from telephone receivers or induction-loop systems.

3.4 The reference plane is the planar area containing points of the receiver-end of the handset which, in normal handset use, rest against the ear (see Fig 1).

3.5 The measurement plane is parallel to, and 10 mm in front of, the reference plane (see Fig 1).

3.6 The reference axis is normal to the reference plane and passes through the center of the receiver cap (or the center of the hole array, for handset types that do not have receiver caps).

3.7 The measurement axis is parallel to the reference axis but may be displaced from that axis, by a maximum of 10 mm (see Fig 1). Within this constraint, the measurement axis may be located where the axial and radial field intensity measurements, are optimum with regard to the requirements. In a handset with a centered receiver and a circularly symmetrical magnetic field, the measurement axis and the reference axis would coincide.

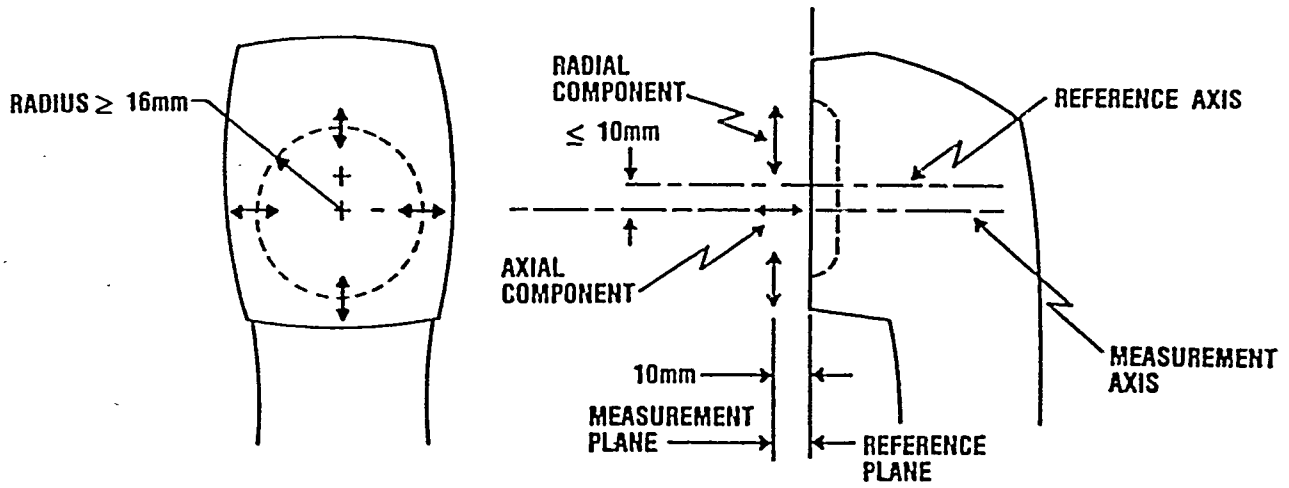

FIG 1 REFERENCE AND MEASUREMENT PLANES AND AXES

4 Technical Requirements

4.1 *General.*

These criteria apply to handsets when tested as a constituent part of a telephone.

4.1.1 Three parameters descriptive of the magnetic field at points in the measurement plane shall be used to ascertain adequacy for magnetic coupling. These three parameters are intensity, direction and frequency response, associated with the field vector.

4.1.2 The procedures for determining the parameter values are defined in the IEEE Standard Method For Measuring The Magnetic Field Intensity Around A Telephone Receiver (Ref: A6), with the exception that this EIA Recommended Standard does not require that the measurements be made using an equivalent loop of 2.75 km of No. 26 AWG cable, but uses a 1250–ohm resistor in series with the battery feed instead (see Fig 2).

4.1.3 When testing other than general purpose analog telephones, e.g., proprietary or digital telephones, an appropriate feed circuit and termination shall be used that produces equivalent test conditions.

4.2 *Axial Field Intensity.*

When measured as specified in 4.1.2, the axial component of the magnetic field directed along the measurement axis and located at the measurement plane, shall be greater than −22 dB relative to 1 A/m, for an input of −10 dBV at 1000 Hz (see Fig 2).

Note.—If the magnitude of the axial component exceeds −19 dB relative to 1 A/m, some relaxation in the frequency response is permitted (See 4.4.1).

4.3 *Radial Field Intensity.*

When measured as specified in 4.1.2, radial components of the magnetic field as measured at four points 90° apart, and at a distance ≥16 mm from the measurement axis (as selected in 4.2), shall be greater than −27 dB relative to 1 A/m, for an input of −10 dBV at 1000 Hz (see Fig 2).

4.4 *Induced Voltage Frequency Response.*

The frequency response of the voltage induced in the probe coil by the axial component of the magnetic field as measured in 4.2, shall fall within the acceptable region of Fig 4A or Fig 4B (see 4.4.1 and 4.4.2), over the frequency range 300-to-3300 Hz.

4.4.1 For receivers with an axial component which exceeds −19 dB relative to 1 A/m, when measured as specified in 4.1.2, the frequency response shall fall within the acceptable region of Fig 4A.

4.4.2 For receivers with an axial component which is less than −19 dB but greater than −22 dB relative to 1 A/m, when measured as specified in 4.1.2, the frequency response shall fall within the acceptable region of Fig 4B.

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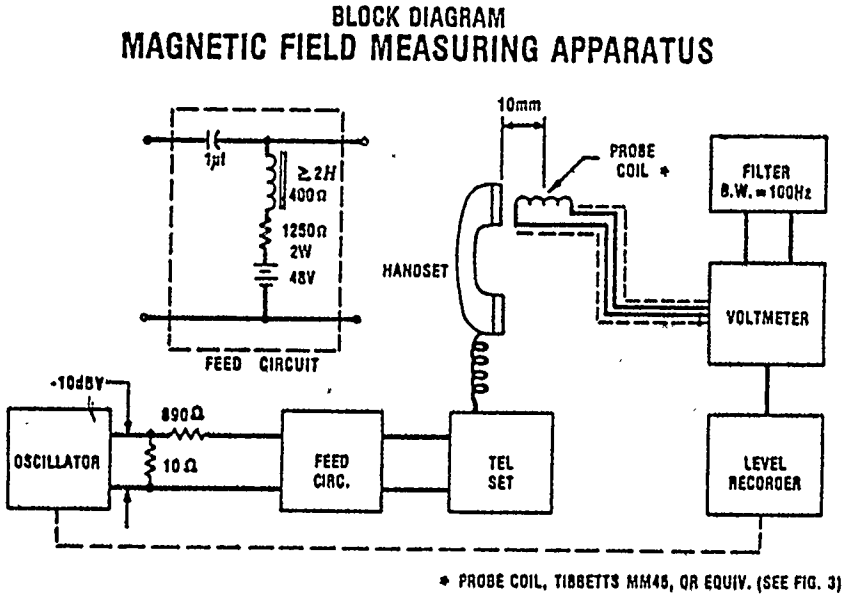
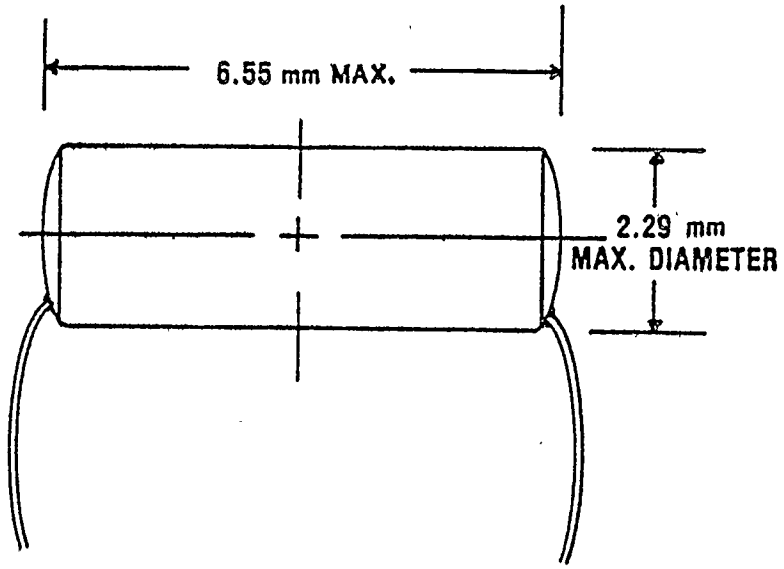


FIG 2 MEASUREMENT BLOCK DIAGRAM



TYPICAL PARAMETERS OF PROBE COIL

DC RESISTANCE: 900Ω
INDUCTANCE: 140 mH
SENSITIVITY: -60.5 dBV/(A/m)

FIG 3 PROBE COIL PARAMETERS

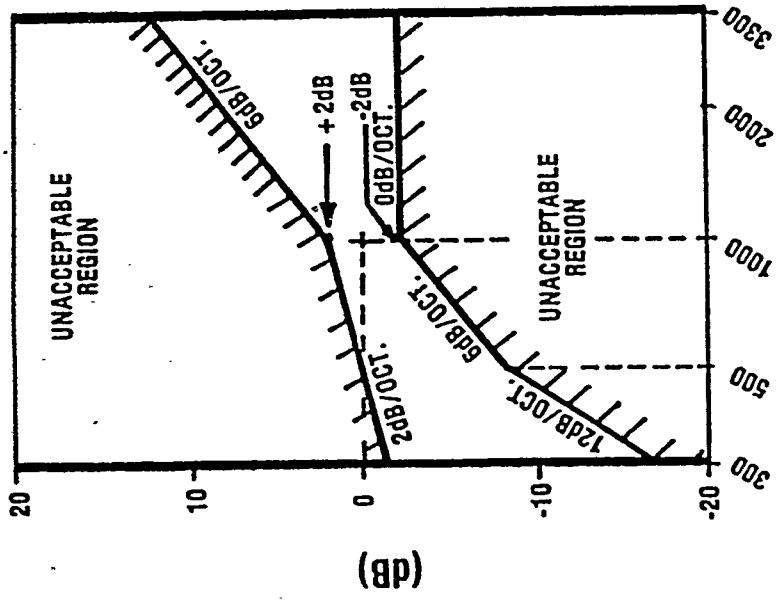


FIG 4B INDUCED VOLTAGE FREQUENCY RESPONSE FOR RECEIVERS WITH AN AXIAL FIELD THAT EXCEEDS -22 dB

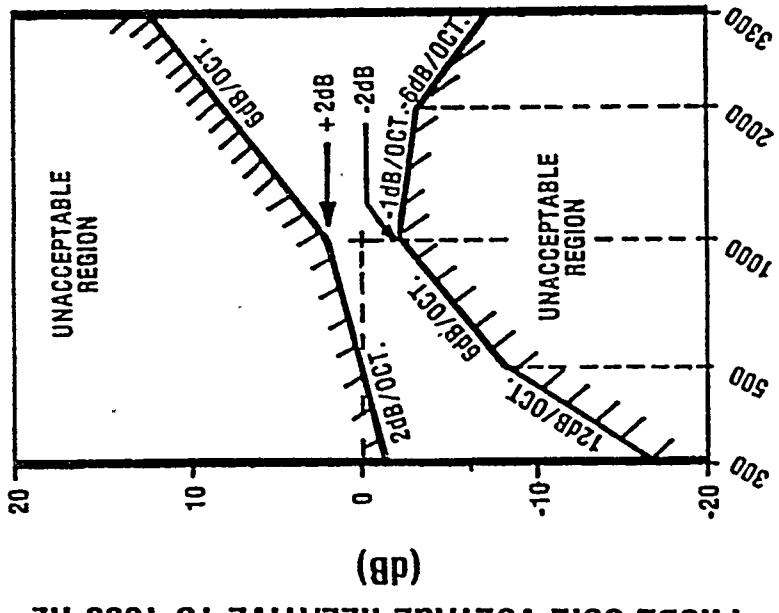


FIG 4A INDUCED VOLTAGE FREQUENCY RESPONSE FOR RECEIVERS WITH AN AXIAL FIELD THAT EXCEEDS -19 dB

BILLING CODE 6712-01-C

Appendix A Bibliography

(A1) EIA Standard RS-464, Private Branch Exchange (PBX) Switching Equipment for Voiceband Applications.

(A2) EIA Standard RS-478, Multi-Line Key Telephone Systems (KTS) for Voiceband Applications.

(A3) EIA Standard RS-470, Telephone Instruments with Loop Signaling for Voiceband Applications.

(A4) EIA Project Number PN-1361, Environmental and Safety Considerations for Voice Telephone Terminals.

(A5) Federal Communications Commission Rules and Regulations, Part 68, Connection of Terminal Equipment to the Telephone Network.

(A6) IEEE Standard, Method for Measuring the Magnetic Field around a Telephone Receiver. (to be published)

8. By adding to Subpart E the following § 68.414:

§ 68.414 Hearing aid-compatibility: enforcement.

Enforcement of §§ 68.4 and 68.112 is hereby delegated to those states which adopt those Sections and provide for their enforcement. The procedures followed by a state to enforce those sections shall provide a 30-day period after a complaint is filed, during which time state personnel shall attempt to resolve a dispute on an informal basis. If a state has not adopted or incorporated §§ 68.4 and 68.112, or failed to act within 6 months from the filing of a complaint with the state public utility commission, the Commission will accept such compliants. A written notification to the complainant that the state believes action is unwarranted is not a failure to act.

PART 64—[AMENDED]

Title 47, Part 64 of the Code of Federal Regulations is amended as follows:

1. By adding a new Subpart F to read as follows:

Subpart F—Furnishing of Customer-Premises Equipment and Related Services Needed by Persons With Impaired Hearing, Speech, Vision or Mobility

Sec.

Subpart F—Furnishing of Customer-Premises Equipment and Related Services Needed by Persons With Impaired Hearing, Speech, Vision or Mobility

§ 64.601 Specialized customer-premises equipment.

(a) Any communications common carrier may provide, under tariff, customer-premises equipment other than a hearing aid-compatible telephone (as defined in § 68.316) which is actually needed by persons whose hearing, speech, vision or mobility is impaired. Such equipment may be provided to persons with those disabilities or to associates or institutions who require such equipment regularly to communicate with them. Examples of such equipment include, but are not limited to, artificial larynxes, bone conductor receivers, and telecommunications devices for the deaf (TDDs).

(b) Any carrier who provides telecommunications devices for the deaf, whether or not pursuant to tariff, shall respond to any inquiry concerning (1) the availability (including general price levels) of TDDs using ASCII, Baudot, or both formats; (2) the compatibility of any TDD with other TDDs and computers.

§ 64.602 Provision of hearing aid-compatible telephones by exchange carriers.

In the absence of alternative suppliers in an exchange area, an exchange carrier must provide a hearing aid-compatible telephone, as defined in § 68.200(i), and provide related installation and maintenance services, in connection with such telephones, on a detariffed basis, to any hearing impaired customer who requests such equipment or services.

§ 64.603 Notification that carrier seeks to terminate operator or directory assistance for TDD users.

Any telephone exchange carrier providing operator and directory assistance services to users of telecommunications devices for the deaf, which seeks to terminate existing services, shall no less than six months prior to a proposed termination date notify the Commission and stte public utility commission of its intent to terminate.

§ 064.604 Enforcement.

Enforcement of §§ 64.602 and 64.603 is hereby delegated to those state public utility commissions which adopt those sections and provide for their enforcement. The procedures followed by a state to enforce those sections shall provide a 30-day period after a complaint is filed, during which time state personnel shall attempt to resolve a dispute on an informal basis. If a state has not adopted §§ 64.602 and 64.603, or has failed to act within six months from the filing of a complaint with the state public utility commission, the Commission will accept such complaints. A written notification to the complainant that the state believes action is unwarranted is not a failure to act.

Separate Statement of Mark S. Fowler, Chairman

RE: Access to Telecommunications Equipment by the Hearing Impaired and Other Disabled Persons

This decision completes an important link of our implementation of *Computer II.* Congress recognized in passing the 1982 Telecommunications for the Disabled Act that the new competitive communications environment must ensure continued service for those with hearing, sight, speech and mobility impairments. Today's decision takes account of these needs, balancing them against the dictates of a robust telecommunications marketplace.

I want to complement the staff in drawing up procedures and regulations that strike that balance extremely well. And I hope that state regulators will use today's decision as their guide in formulating policies and reviewing tariffs that affect the rights of consumers that need special services. Under this decision, the hearing impaired and others will find that they are merely different, not disabled, consumers when it comes to using their telephones.

[FR Doc. 84-399 Filed 1-10-84; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 78-28; MM Docket No. 83-16; RM-3103; RM-3740; FCC 83-572]

Relative Phase Tolerances for Directional AM Stations; and, Amendment of the Commission's Rules To Expand the Use of Toroidal Transformers; and, To Provide for the Use of Radio Frequency Relays in Sampling Element Transmission Lines

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts new rules that require AM broadcasters using directional antenna systems to keep the relative antenna phases to within ±3° of the values specified on the station license. Additionally, the rules provide for expanded use of toroidal current transformers as a means of deriving current samples in direction AM station antenna systems and

provide for the use of radio frequency relays in sampling element transmission lines. This action is taken in response to requests that the technical rules relating to AM broadcasting be updated to reflect the capabilities of current broadcast technology. The intended effect is to provide AM broadcasters with a simple means of ascertaining proper directional antenna operation and to provide them with flexibility in the design of directional antenna monitoring systems.

DATES: The new rules become effective on January 1, 1984.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: James E. McNally, Jr., Mass Media Bureau, Policy and Rules Division, Technical and International Branch (202) 632-9660.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Report and Order; Proceedings Terminated

In the matter of amendment of § 73.52 of the Commission's Rules and Regulations with respect to relative phase tolerances for directional AM stations (BC Docket No. 78-28); amendment of § 73.68 of the rules to expand the use of toroidal transformers as a method of deriving current samples in directional (AM) antenna systems (MM Docket No. 83-16 RM-3103); and to provide for the use of radio frequency relays in sampling element transmission lines (RM-3740).

Adopted: December 1, 1983.
Released: December 20, 1983.
By the Commission:

Introduction

1. For reasons of administrative efficiency and because the above-referenced proceedings essentially are concerned with the accuracy and stability of directional AM broadcast station antenna systems and associated monitoring equipment, we wish to bring the two proceedings to a conclusion by means of this single *Report and Order.*

BC Docket No. 78-28

2. On January 25, 1978, the Commission adopted a *Notice of Proposed Rule Making* (*"78-28 Notice"*) in BC Docket No. 78-28 (43 FR 4674, February 3, 1978) seeking to formalize a policy that required the relative phases of directional AM station antenna currents to be maintained within ±3° of the specified values. The rules did not (and still do not) specify the accuracy within which the phases of the currents should be maintained. Only in cases where there are unusually rigid requirements for the protection of other stations does the station license specify the limits within which phase relationships must be maintained. Accordingly, the Commission proposed to amend then § 73.52 (now § 73.62) to require licensees of AM stations with directional antenna systems to maintain the phases of the antenna currents within ±3° of the values specified in the station license, unless more stringent limits are specified therein.[1] Comments were filed by the Association of Federal Communications Consulting Engineers (AFCCE), E. Harold Munn, Jr. & Associates, Inc. (Munn), American Broadcasting Company (ABC), National Association of Broadcasters (NAB), Association for Broadcast Engineering Standards, Inc. (ABES) and David C. Williams. No reply comments were filed.

Comment Summary

3. The AFCCE, Munn and ABES support the proposal to adopt a tolerance of ±3° for directional AM stations. ABC questions whether there is really a need to formally codify the existing policy, but agrees that a ±3° tolerance appears reasonable as a general matter. ABES contends that regulation of antenna monitor current amplitudes without similar regulation of antenna phase relationships is anomalous and that all applicable standards should be set forth in the rules. Nevertheless, ABES suggests that adoption of a ±5° tolerance might be more appropriate if such deviation resulted in no additional interference to the service areas of other stations. Lastly, all of these parties emphasize that the final rule should clearly indicate that licensees would be expected to maintain the ±3° phasing tolerance only during periods of normal operation, not during periods of extreme weather or unusual climatic conditions.

4. NAB believes that neither internal (*i.e.*, antenna monitor indications) nor external (*i.e.*, monitoring point field strength indications) indications can be relied upon exclusively to provide complete information about the operating condition of the antenna array because of potentially significant environmental changes possible in either the antenna array or monitoring point environments. Nevertheless, NAB recommends that if changes are contemplated in the regulation of directional antenna systems, either internal or external indications should prevail, but not both simultaneously. NAB suggests that if we prefer to rely more heavily on internal antenna indications, a substantial relaxation of the requirements pertaining to external indications would be appropriate. Thus, NAB argues that if the ±3° phase tolerance is adopted as the general rule, a 25% tolerance should be applied to the monitoring point values.[2] Further, NAB indicates that a significant number of stations rely on flexibility in antenna phase relationship to make seasonal adjustments to the antenna pattern in order to obtain correct monitoring point values. Such phase adjustments are apparently viewed as an "escape valve" by which broadcasters can avoid having to continually apply for special temporary authorization to operate outside of license-specified parameters. NAB, like ABES, also favors relaxed phase tolerances if applicants or licensees are able to show that operation within the expanded tolerances would result in no additional interference to other stations.

5. Williams does not favor adoption of the ±3° phase tolerance for a number of reasons, and prefers that we pursue a more comprehensive plan designed to ensure proper directional antenna operation. He expresses concern that if we adopt a formal phase angle tolerance, we will attach more importance to it than to field strength, which he considers the final measure of proper antenna operation. Further, Williams demonstrates that antenna arrays with sharp nulls can experience severe distortion of the pattern (particularly in the depth and direction of critical nulls) with phase deviations of ±3°. Thus, he views phase parameters alone as a poor measure of antenna performance. Like the others filing comments, he points out that antenna phase may shift considerably depending on temperature and humidity. This shifting is aggravated, he notes, when the sampling system is poorly constructed and maintained. As an alternative to our proposal, he recommends implementation of a program containing the following elements: additional antenna monitor and field strength measurements when the 5% ratio tolerance and ±3° phase angle tolerance are exceeded; additional skeleton and partial proofs of performance required as necessary; submission of a "proof of performance of the sampling system" after

[1] By rereguiatory *Order* adopted September 27, 1979 (FCC 79-690), the FCC divided the subject matter ("Maintenance of antenna input power and directional antenna parameters") of § 73.53 between new §§ 73.62 ("Directional antenna system tolerances") and 73.1560 ("Operating power tolerance"). Thus, the pertinent rule section for the purposes of this proceeding is § 73.62.

[2] The rules now require that the field strength values not exceed the maximum monitoring point values specified in the station authorization.

construction or major repairs to the sampling system; mandatory upgrading of sampling systems when deemed necessary; or upgrading of all sampling systems by a specified date.

Discussion

6. We continue to believe that specification of an antenna phase tolerance in the rules is desirable. Proper directional antenna operation can be assumed only when antenna amplitudes and phases are within specified parameters. As ABES points out, it is anomalous that such a tolerance is lacking in the rules when a tolerance exists for antenna current amplitude ratios.

7. As we indicated in the *78-28 Notice*, the ±3° tolerance approximates the current ±5% tolerance applicable to antenna current amplitude ratios. It does not appear that this value would be difficult to maintain, particularly if deviations therefrom are permitted during periods of unusual weather or severe climatic conditions. In this regard, we note that there are a few directional AM stations that are required to hold their relative antenna phases to within 0.5° of the authorized values, and these stations are able to do so using FCC-approved sampling systems and precision antenna monitors. Accordingly, we conclude that as a general rule, operation in accordance with the proposed ±3° phase tolerance is appropriate.

8. Moreover, we disagree with NAB's contention that recent improvements in antenna sampling systems alone do not justify imposition of a ±3° phase tolerance. We take the view that in many cases where an approved antenna sampling system was not used, the actual antenna radiation pattern tended to be more stable than the indications of the antenna sampling system. Any measurement device must be more accurate than the tolerance applicable to the parameter it is being used to measure. This is why we have found it necessary, in various proceedings, to encourage improvements in the quality of both the antenna sampling system itself, and the antenna monitor. We have provided various incentives for AM broadcasters to upgrade the quality of their antenna sampling systems for some time.[3] Yet 35% of directional AM stations still operate with sampling systems of uncertain quality.

9. We believe that monitoring point measurements and internal antenna operating parameters (current ratios and phase) are equally important in determining proper directional antenna operation. The two types of measurements act as a good check and balance system. Only a full proof-of-performance could conclusively demonstrate proper directional antenna operation and this is a very costly and time consuming process. The indications provided by the comparatively few monitoring points specified in the station authorization may vary with changing ground conductivity and may not always reflect the unattenuated radiation. They are also susceptible to reradiation from nearby objects. Further, we require that only a few radials be monitored and these may not conclusively demonstrate that the proper antenna pattern is being obtained. Lastly, we set only upper limits for monitoring point indications, but indications which are too low may also indicate misadjustment.

10. The operating values for the antenna current ratios and phases (the internal antenna monitoring parameters) specified on an authorization are established as the result of an extensive proof-of-performance made on the antenna system. Unlike monitoring point field strength indications, antenna monitor indications are easy to obtain on a frequent basis and are often more reliable, being less susceptible to the effects of local environmental changes. Experience has shown that stability in antenna monitor indications generally ensures the stability of directional antenna system operation.

11. However, we are sensitive to the concerns expressed both in this proceeding and earlier in the Docket No. 18471 proceeding that adherence to such a phase tolerance should be the norm, but that short-term variance from such a standard be permissible during unfavorable weather conditions. We agree with the commenters that out-of-tolerance indications during heavy rain, snow or icing, or during abrupt and substantial changes in temperature or humidity, including consequent effects on ground conductivity, may not warrant immediate corrective action. Clearly, to make adjustments to either antenna current amplitude or phase in the absence of appropriate field strength indications may be unwise. Accordingly, we have decided to allow out-of-tolerance operation occuring as a result of adverse climatic conditions for a period of up to 10 consecutive days, provided the monitoring point values specified in the station authorization are within limits. This period is, we think, sufficient for the resolution of most problems of this type. An open-ended period could lead to abuses. Should licensees need to operate out-of-tolerance for more than 10 days, they will be required to notify our AM Branch and request special temporary authority to operate at variance with the rule. Lastly, antenna sample current ratios have an equal potential for being disturbed and we think adoption of a similar policy would be appropriate. Previously, licensees have had to request special temporary authority to operate at variance with the terms of their authorization immediately at the onset of such a situation. We believe this is no longer necessary. Accordingly, § 73.62 is being amended to let the 10 day grace period apply to both antenna monitor ratio and phase indications. The adoption of the 10 day grace period applicable to out-of-tolerance antenna phase and ratio indications should effectively negate any operational or administrative burdens that might be implied by adoption of the new phase tolerance.

12. We do not believe that a 25% tolerance need be applied to monitoring point field strength indications if the ±3° antenna phase tolerance is adopted. On December 6, 1979, we adopted, on an experimental basis, a policy of assigning monitoring point limits using the "direct ratio method."[4] This policy substantially relaxed the monitoring point tolerances from those in effect for many years prior to that time. Our experience with this new policy has confirmed its value in reducing the frequency of adjustments to the antenna patterns of many stations and in reducing the number of readjustment applications filed with the Commission. This has been possible without increasing the interference among stations. Accordingly, rather than adopt the 25% tolerance suggested by NAB, we are herewith adopting permanently the monitoring point policy described in footnote 4.

[3] Most recently, see the *Report and Order* BC Docket No. 82-537, which eliminated most broadcast periodic measurement and logging requirements. However, the rules required that broadcasters without approved sampling systems continue periodic measurement and logging of those operating parameters concerned with directional antenna operation. See § 73.1820(a)(2).

[4] This policy was implemented by letter from the Chief, Broadcast Bureau to Donald G. Everist, Chairman of the FCC Processing and Procedure Committee of the Association of Federal Communications Consulting Engineers. The complete text of this letter is given in Appendix B. Under the "direct ratio method," monitoring point limits are obtained by multiplying the measured field strength at a monitoring point by the ratio of the authorized maximum radiation divided by the unattenuated radiation established in the proof-of-performance. This method simply restricts unattenuated radiation to within its maximum authorized value whereas the traditional method in many cases, restricted radiation more severely

13. As a final matter, NAB and ABES favor a relaxed phase tolerance if applicants or licensees are able to show that operation would result in no additional interference to other stations. However, such a tolerance (and the showing made to support it) could be rendered meaningless by new or modified cochannel or adjacent channel assignments. Further, such a showing would entail substantial study which, by its very nature, would be more theoretical than practical. Guidelines have long been established concerning phase stability requirements and we see no reason to modify them at this time.

Comments in MM Docket No. 83-16

14. On January 13, 1983, the Commission adopted a *Notice of Proposed Rule Making* (*"83-16 Notice"*) in MM Docket No. 83-16 (48 FR 5978, February 9, 1983) in response to petitions filed by the Association of Federal Communications Consulting Engineers ("AFCCE") and Charles P. Crossno ("Crossno"), a consulting engineer. AFCCE, in RM-3103, sought amendment of the rules to provide for greater flexibility in the use of toroidal current transformers as a means of deriving directional AM station antenna sample currents. It asked the FCC to allow use of these transformers whenever it could be demonstrated that the sampling system operated reliably. Crossno, in RM-3740, requested a change in the rules to permit AM broadcasters to use a remotely controlled switching relay to feed the reference and relative sample currents to the antenna monitor from a central point in the antenna array.

15. In the *83-16 Notice*, the Commission proposed restricting the use of toroidal current transformers to stations with antenna towers of uniform cross-section, or self-supporting towers having a central common feedpoint for all tower legs, where the electrical height of the towers would not exceed 130°. Additionally, we proposed to allow the use of such transformers with "folded unipole" antennas of any height, provided the impedance of the individual tower would not exceed 70 ohms. These limitations were based on the assumed impracticality of using toroidal current transformers on towers greater than 130° in electrical height and out of desire to avoid the administrative burdens that would have been entailed by the showings proposed by AFCCE.

16. Lastly, we proposed to allow the use of a centrally located relay or other type of switch to provide current samples to the antenna monitor as requested by Crossno. However, we expressed the belief that two related suggestions were unnecessarily burdensome in view of the potential benefit. The two suggestions were that the antenna monitor be capable of being installed at the central switching point with no significant difference in observed ratios or phase indications and that impedance line measurements be made at ±5 kHz of the station's operating frequency at the antenna monitor end of the two sampling lines for each selected element. These latter requirements were not included in the proposed rules.

17. Comments in MM Docket No. 83-16 were filed by AFCCE, Robert A. Jones, P.E. (Jones), Charles I. Gallagher, P.E. (Gallagher) and Taft Broadcasting Company. NAB filed reply comments, and late-filed comments were submitted by Thomas G. Osenkowski on behalf of Radio Station WNYC.

Comments on RM-3103

18. AFCCE and NAB argue for adoption of the original AFCCE proposal (RM-3103) that would allow the use of toroidal current transformers as antenna monitor sample current sources at any AM directional station, provided that a showing of adequate stability could be made. Thus, they are not in favor of the restrictions proposed by the Commission in the *83-16 Notice*.

19. Jones, in his comments, agrees that the toroidal current transformers can be successfully used on guyed towers of uniform cross-section up to 130° in electrical height, but argues that base current sampling is not sufficiently reliable where self-supported or folded unipole types of antennas are used. He also opposes the proposed 30 day test or trial period as a means of demonstrating satisfactory performance of toroidal current transformers in lieu of loops on taller towers.

20. Gallagher expresses the belief that antenna monitor current samples should only be taken from rigid, non-rotatable loops operated at tower potential. He considers any other technique a compromise and cannot see any circumstance where any other system would result in the sample current being more accurate or reliable than when derived from the tower itself. Amplifying, somewhat, the comments of Jones, Gallagher points out that using the antenna base current as the antenna monitor signal source potentially involves three different types of currents: (1) the actual antenna current (which we will call the "radiated current"), (2) the current to ground which results from the distributed capacity of the base insulator and the lower 10 to 20 feet of tower (which we will call the "distributed base capacity current"), and (3) any current to ground through the tower lighting choke (which we will call the "choke current"). He notes that as long as a tower has a low impedance (as is the case with towers with an electrical height near 90°), the distributed base capacity current will be small and will have little effect on the accuracy of the current sample. However, as a tower (and its impedance) increases, the ratio of the distributed base capacity current to the radiated current will increase and can be significant. He cites two cases where use of toroidal current transformers at stations with taller towers either did or would have resulted in inaccurate sample current ratio indications. On the basis of his experience, Gallagher views the proposed 130° limit as a wise limit on the use of toroidal current transformers.

21. Taft, in its comments, argues that the 130° height limit is inadequate, based on its experience with Station WTVN (Columbus, Ohio). Taft submits extensive measurement data showing accurate and stable current samples derived from toroidal current transformers installed at the base of a tower 141.6° in electrical height. Accordingly, Taft suggests an upper height limit of 150-160° and would prefer to see the terms of the original AFCCE petition adopted (where use with a tower of any height would be permitted if a suitable showing of stability and accuracy was made).

22. Osenkowski discusses at some length his efforts to install untuned sampling loops on two self-supported towers of Station WNYC. He encountered trouble in obtaining sample current signal levels of sufficient amplitude to operate the antenna monitor. After considering various alternatives, he decided to install toroidal current transformers which subsequently provided signals of sufficient amplitude and stability. Osenkowski notes that while uniform, guyed antenna towers generally have sinusoidally distributed current, self-supported, diamond and other assorted types of towers are assumed to be markedly non-sinusoidal in terms of current distribution. Any number of factors, he indicates, can result in non-sinusoidal current distribution, making the point of current maxima difficult to determine and subject to change. In such cases, loop placement can be difficult to determine and use of toroidal current transformers can often be beneficial. Osenkowski notes that while a toroidal current transformer signal sample may not reflect a condition of snow or ice, it should be remembered that such a

condition will generally prevail for all towers in a particular antenna array. Thus, assuming that the transformers are located in the same electrical positions, effects of change in tower operating impedance and the resulting change in the mutual impedance would be reflected back to the antenna monitor. Ice accumulation on a loop antenna or on a loop insulator can result in undesired changes in the array—an unlikely occurrence where toroidal current transformers are used. Thus, Osenkowski concludes that use of toroidal current transformers is beneficial to broadcasters, particularly in cases where satisfactory operation cannot be obtained under the terms of the present rules (*i.e.*, with loops).

Comments on RM–3740

23. Gallagher, Jones and NAB (in its reply comments) commented on our proposals relative to petition RM–3740 (use of relays or a motor-driven switch to feed antenna sample currents to the antenna monitor via two coaxial cables rather than with cables from each antenna tower). Jones merely recommended that any switching relays meet all of the requirements for equipment used in FCC approved sampling systems. Gallagher expressed the belief that radio frequency (RF) relays should be of the coaxial type and be adequately shielded. He favors a means of taking sample current indications ahead of the relay and favors retention of the safeguards suggested in the original petition. However, NAB suggested that installation of "fail safe" indicating devices could serve to limit the probability of undetected relay failures. Moreover, NAB notes that other operating parameters (such as direct reading of antenna base currents or field strength measurements) would assist licensees in making accurate determinations of antenna or sampling system component failures.

Discussion

24. Except for the reservations expressed by Gallagher and Jones, the comments support the position taken by the Commission in the *83–16 Notice*. Thus, for the reasons expressed below, we have decided to adopt rules consistent with those proposed in the *83–16 Notice*, with the exception that antenna heights over the proposed limit of 130° will be allowed subject to a showing that the installation meets our accuracy and stability requirements.

25. First, we agree with Gallagher that three separate current components may flow in a tower. These have been identified as the radiated current, the distributed base capacity current and the choke current. An effect similar to that of the choke current may occur when land mobile or other antennas are mounted on a broadcast tower if their feed lines are not sufficiently isolated at the tower's base. However, all such choke currents will be negligible if the tower mounted devices are properly isocoupled. Moreover, in the absence of antenna or other special devices, any choke currents in the various antennas in the array should be nearly equal, particularly if the antenna towers are of the same type and height.

26. The same observation applies in the case of the distributed base capacity current. As Osenkowski notes in his comments, the weather conditions seen by each tower in a particular array should be the same and the effects on each tower should be similar. Thus, while a change in antenna sample current amplitudes is possible, the ratios and the phase angles should remain unchanged. Of course, this probability will diminish where one or more towers in an array is physically or electrically different than the others. Thus, while we agree with Gallagher that there are theoretical reasons why toroidal current transformers should not be used with towers greater than 130° in electrical height, in the majority of cases (where the antenna towers in the array are all of the same type), the practical consequences of such incidental currents are likely to be minimal.

27. Further, as Osenkowski points out elsewhere in his comments, the sensitivity of antenna monitors is generally around 2 volts for satisfactory performance.[5] High sensitivity toroidal current transformers deliver 1 volt of sample current per ampere of base antenna current. Thus, if a typical antenna monitor is used with toroidal current transformers, a base current on the order of two amperes is necessary for the reference input and .5 ampere for the relative inputs.[6] Since the antenna base resistance generally increases (and the base current decreases) as the height increases, there will be a practical limit on the height of a tower with which toroidal current transformers may be used. This limit cannot be stated as a general rule because it depends, ultimately, on the smallest antenna current present during the station's lower power mode of operation.

28. In view of the foregoing considerations, we have decided not to prohibit the use of toroidal current transformers in cases where an antenna tower is more than 130° in electrical height. Rather, we will leave this decision to the broadcaster or his consulting engineer. Thus, broadcasters who wish to use toroidal current transformers with towers 110° to 130° in electrical height will merely be required to certify the stability of their sampling system by meeting required tolerances for a 30 day period. We continue to believe that the one month period is sufficient to reveal any anomalies in antenna sampling systems using toroidal current transformers where the towers are less than 130° in electrical height. However, in view of potential uncertainties in operation, special showings to demonstrate the suitability of toroidal current transformers in antenna systems with towers more than 130° in electrical height will be required.[7] The showing must reflect that over a consecutive 30 day period, all antenna monitor indications were within tolerance. Data shall be taken daily or weekly for each antenna pattern pursuant to the new provisions set forth in § 73.68(a)(4)(ii).

29. The comments submitted in response to the *83–16 Notice* supported our proposal to allow the use of radio frequency relays to switch sampling current signals from different antenna towers and feed them to the antennas monitor by way of only two sampling lines (one carrying the "reference" signal and the other the "relative" signal). Accordingly, we are adopting the rules proposed therein.[8] However, we have anticipated that in lieu of a switch or relay, a licensee may wish to install the antenna monitor at the central point in the array and remotely read its various meter indications. This is already permitted if an antenna phasor unit is located in the center of the antenna field. (See Section 73.69(a)(1)). However, we have no objection to installation of the antenna monitor in a structure other than a phasor house, provided the antenna monitor can operate accurately over the wide temperature and humidity extremes that are typical of antenna tuning houses. In this regard, we expect that a similar type of structure would serve as a junction point for the antenna sample current lines and as a housing for the ratio frequency relay or motor-driven switch. However, in the case of extreme temperature or humidity

[5] In fact, sensitivity for the reference input is generally around 2 volts, and sensitivity for the relative signal inputs is generally around 0.5 volt.

[6] This assumes negligible loss in the coaxial cable connecting the antenna monitor to the toroidal current transformers.

[7] We would note that of 1640 directional operations, only 250 have towers more than 130° in electrical height.

[8] See the *83–16 Notice*, Paragraph 21.

changes, the licensee would have to install such equipment as may be necessary to keep the environment in the housing structure within the specified operating parameters for the particular antenna monitor. Thus, while we are amending the rules as requested, we urge licensees to give careful consideration to cost-benefit tradeoffs associated with centralized installation of a radio frequency relay or switch, or even the antenna monitor itself, since operating and maintenance costs of the additional structure, as well as potential inconvenience in visiting it for maintenance purposes, may eventually surpass the cost of running antenna sample current coaxial cable from each tower directly to the transmitter building.

Conclusion

30. The *78–28 Notice* was issued prior to the adoption of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) and is therefore exempt from its provisions. Nevertheless, we recognize that a small number of directional AM station licensees may be adversely affected by our adoption of the ±3° phase tolerance in that they may be compelled to upgrade substandard antenna monitoring systems where the monitoring system, rather than the actual antenna system, is responsible for out-of-tolerance indications. According to our estimates, there are approximately 650 directional AM stations (most of which would probably be classified as "small business entities" under the provisions of the Regulatory Flexibility Act) that have not installed FCC-approved antenna monitoring systems. Of this number, some undoubtedly have sampling systems that are adequate, even if not FCC-approved. Accordingly, the number of directional AM station licensees that potentially would be adversely affected by our adoption of the ±3° phase tolerance is small.

31. With respect to the Docket No. 83–16 proceeding, we pointed out in the *Notice* (Paragraph 30) that the provisions of the Regulatory Flexibility Act did not apply since the rules proposed were completely optional in nature and would not compel licensees to acquire any new equipment, undertake new record-keeping requirements or modify existing practice in any way. This contention was not disputed in the comments, so no additional Regulatory Flexibility Act analysis is herein being provided.

32. Accordingly, it is ordered, pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, that Part 73 of the Commission's Rules are amended, effective January 1, 1984, as set forth in the attached Appendix. It is further ordered That this proceeding is terminated.

33. It is further ordered that the Secretary shall cause this *Report and Order* and its appendices to be published in the FCC Reports.

34. Further information on this matter may be obtained by contacting James E. McNally, Jr., Mass Media Bureau, (202) 632–9660.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix A

I. 47 CFR Part 73 is amended as follows:

1. Section 73.62 is revised as follows:

§ 73.62 Directional antenna system tolerances.

Each AM station operating a directional antenna must maintain the indicated relative amplitudes of the antenna base currents and antenna monitor currents within 5% of the values specified on the instrument of authorization, unless other tolerances are specified therein. Directional antenna relative phase currents must be maintained to within ±3° of the values specified on the instrument of authorization, unless other tolerances are specified therein; provided that during periods of inclement weather or severe climatic conditions, a licensee may operate at variance with these provisions for a period up to 10 consecutive days, providing the monitoring point values specified in the station authorization are within limits. If, at the end of this 10-day period normal operation is not restored, the licensee must request from the FCC in Washington, D.C., special temporary authority to operate the station at variance with the provisions of this section.

2. Section 73.68 is amended by revising subparagraph (a)(1); by revising subparagraph (a)(2); and by adding new subparagraphs (a)(3) and (a)(4) as follows:

§ 73.68 Sampling systems for antenna monitors

(a) * * *

(1) All coaxial cable from the sampling elements to the antenna monitor, including cable used in the construction of isolation coils, except short lengths of flexible cable connecting the transmitter house sampling line termination to the monitor, must have a solid outer conductor and have uniform physical and electrical characteristics. The dielectric must be either predominantly pressurized air or other inert gas, or foamed polyethylene.

(i) All sampling lines for a critical antenna array (i.e., an array for which the station authorization requires the maintenance of phase and current relationships within specified tolerances) must be of the same electrical length, with corresponding lengths of all lines exposed to equivalent environmental conditions.

(ii) For other arrays, lines of differing length may be employed, provided that the difference in length between the longest and the shortest line is not so great that, over the range of temperatures to which the system is exposed, predicted errors in indicated phase difference resulting from such temperature changes will exceed 0.5°.

(iii) A sampling line mounted on a tower must be adequately supported to prevent displacement, and must be protected against physical damage. Where feasible, sampling line sections between each tower base and the transmitter house is to be jacketed and buried: lines run above ground must be firmly supported, and protected against physical damage, with the outer conductor strapped to the station's ground system at such points as found necessary to minimize currents induced by antenna radiation.

(iv) All necessary connections and outdoor cable terminations must be made with waterproof fittings designed for use with the type of cable employed.

(v) For determining the permissible differences in line lengths that may be installed, the total difference between the highest listed normal daily maximum and lowest listed normal daily minimum temperatures as shown for the nearest location shown in the most recent issue of "Local Climatological Data Annual Summaries" shall be used in the calculations. This publication is available from:

National Climatic Center
National Oceanic and Atmospheric Administration
Asheville, North Carolina 28801

(vi) The provisions of this subparagraph do not preclude the use of a centrally located impedance-matched radio frequency relay or remotely controlled switch to provide relative sampling currents to the antenna monitor over a single transmission line. However, the reference sampling line and the relative sampling line from the switching point to the antenna monitor must be identical in type and electrical length, and must be exposed to the same

environment. The sampling line from each sampling element to the relay must conform to all relevant requirements indicated in this subparagraph. Alternatively, a licensee may install the antenna monitor at a centrally located or otherwise convenient location provided that the temperature and humidity of the operating environment are maintained within the tolerances specified by the antenna monitor manufacturer. When such an antenna monitor is to be remotely controlled and read, installation shall conform to the requirements of § 73.67 of this Part.

(2) Except as provided below, sampling elements must be single turn, unshielded loops of extremely rigid construction, with ample, firmly positioned gaps at the open loop end, mounted on towers at a fixed orientation. Loops must be installed to operate at tower potential, provided that for towers less than 130° in electrical height, loops operating at ground potential may be used. Each loop must be mounted on the tower near the point of maximum tower current, but in no case less than 3 meters (10 feet) above ground.

(3) Shielded current transformers may be used in lieu of unshielded loops to extract samples from antenna feed lines at the base of each tower having a uniform cross-section and 110° or less in electrical height, or a self-supporting tower 110° or less in electrical height, provided it has a common feedpoint for all tower legs.

(4) Shielded current transformers may be used in lieu of unshielded loops to extract samples from the antenna feed line at the base of each tower having a uniform cross-section more than 110° but not greater than 130° in electrical height, self-supporting towers not exceeding 130° in electrical height and having a central common feedpoint for all tower legs, and folded unipole antennas of any height having a base driving point resistance and reactance not exceeding 70 ohms, provided the following conditions are met:

(i) Stability of operation during a test period of 30 continuous days using the current transformers must demonstrate that the antenna monitor sample current ratios do not exceed 5% of those specified on the station authorization and that the relative phase indications are within ±3° of the values specified on the station authorization, unless a more stringent tolerence is specified therein.

(ii) The following parameters shall be read and recorded as indicated during the 30 day test period for each antenna pattern:

(A) Indications at each monitoring point specified in the station authorization, weekly.

(B) Base currents and their calculated ratios, weekly.

(C) Common point current, daily.

(D) Antenna monitor sample current amplitudes and their ratios, daily.

(E) Antenna monitor phase indications, daily.

(iii) Failure to meet the stability requirement specified in (i) of this paragraph will require that the licensee seek special temporary authority to operate at variance with the terms of the station instrument of authorization until the problem can be corrected.

(iv) A certification by the licensee that the sampling system meets the stability requirement specified in this paragraph must be included in the request for approval of the monitor sampling system together with the information specified in paragraph (c) of this section.

(v) Shielded current transformers may be used may be used in lieu of unshielded loops to extract samples from the antenna feed line at the base of each tower greater than 130° in electrical height provided the requirements set forth in subparagraphs (a)(4) (i) through (iii) of this section are satisfied and the resulting data is included in the request for approval of the monitor sampling system together with the information specified in paragraph (c) of this section.

(vi) The FCC may request the licensee to conduct such other tests, or measurements, or submit additional data it deems necessary to determine the stability of the antenna sampling system.

* * * * *

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Appendix B

December 6, 1979.

Mr. Donald G. Everist, Chairman,
FCC Processing and Procedure Committee, Association of Federal Communications Consulting Engineers, 1015—15th Street, NW., Suite 703, Washington, D.C. 20005

Dear Mr. Everist: I have your letter of October 22nd, written on behalf of your committee, requesting modification of certain Commission engineering practices used in assigning monitoring point limits to AM directional broadcast stations. Your letter formalizes suggestions developed in a series of meetings, begun well over a year ago, between your committee and members of the Broadcast Facilities Division's engineering staff concerning the policies and procedures governing the preparation and processing of various types of applications. The interest shown throughout this period by your committee in helping improve our processing procedures has been helpful and is greatly appreciated.

Specifically, your committee feels that, under the present policy, monitoring point limits are often assigned which are unnecessarily restrictive and urges the adoption of a policy whereby the assignment of these limits is based on the "direct ratio" method. The committee also urges the establishment of a policy whereby stations subject to seasonal conductivity changes can achieve relaxed limits upon submission of "seasonal proofs." Additionally, the committee requests that the Commission refrain from altering monitoring point limits based on partial proofs of performance if "substantial conformance" of the radiation patterns is demonstrated and the antenna parameters are either essentially unchanged or, if changed, adequately justified.

In response to your first suggestion, I am pleased to announce that we have, on an experimental basis, adopted the policy of assigning monitoring point limits using the direct ratio method. Under the direct ratio method, monitoring point limits are obtained by multiplying the measured field strength at a monitoring point by the ratio of the authorized maximum radiation divided by the unattenuated radiation established in the proof of performance. This method simply restricts unattenuated radiation to within its maximum authorized value whereas the traditional method, in many cases, restricted radiation much more severely. Theoretically, objectionable interference is not caused if antenna radiation is maintained below its maximum authorized value. Assuming, therefore, that changes in monitoring point field strength correspond directly to changes in antenna radiation, monitoring point limits determined by the direct ratio method should be adequate to avoid interference. However, since the assumption of a linear relationship between monitor point readings and antenna radiation becomes somewhat questionable with excessive changes, we do not intend to assign limits higher than 200% above proof values. In addition, because operation with monitoring point field strength in excess of the direct ratio limit could result in objectionable interference, we will continue to deny requests to exceed those limits.

Your second suggestion addresses a problem encountered in many areas of the country where complete proofs of performance are done during the summer months when ground conductivity is significantly lower than during the winter months. Often monitoring point limits resulting from such summertime proofs are not sufficient to accommodate higher readings encountered during winter. In such a case increased limits are obtained by collecting supplemental wintertime data in the form of a partial proof of performance consisting of at least 10 measurements on each radial established in the complete proof (see Section 73.154(a) of the Rules). You suggest that the Commission accept "seasonal proofs" for this purpose in lieu of partial proofs. A seasonal proof would consist of "at least 20 field strength measurements, both nondirectional and directional, on each of the radials specified in the construction permit and at least one radial in the major lobe."

In responding to this suggestion, it is helpful to understand the approach used by Commission engineers in analyzing complete proofs of performance. These generally consist of 20 or 30 measurements per radial (see § 73.186(a)(1)) and serve as the reference for all subsequent partial proofs. As you know, the fundamental problem is distinguishing between the effects of conductivity and antenna radiation. In making this distinction, we consider it imperative to establish, as conclusively as possible, the size and shape of the nondirectional radiation pattern. The nondirectional radiating system is simpler (fewer variables) than the directional system and its RMS (size) can be more accurately determined since each measured radial is of more or less equal significance, particularly if the radials are evenly spaced. With a directional pattern, many of the minor-lobe and null radials do not contribute significantly toward defining the RMS, leaving the remaining main lobe radials with a disproportionate influence on the determination of the pattern size. For these same reasons, the Commission relies entirely on nondirectional measurement data in determining the extent of seasonal changes in conductivity.

Because of the crucial role played by the nondirectional pattern resulting from a complete proof of performance, extreme care is used in analyzing the measurement data. Experienced engineers who have been carefully trained are used in this work. All known external factors such as terrain features, reradiating structures, pipe lines, etc., are taken into account. Each radial is repeatedly weighed against the others with constant attention to the resulting pattern shape and RMS and the analysis is not considered complete until the importance of each element of data is understood from the perspective of the whole. Of course, the more extensive and "well behaved" the measurement data, the more precise and confident the engineer can be with his/her analysis. Once the nondirectional pattern is established, analysis of the directional data can usually be done mathematically, rather than graphically, using either arithmetic or logarithmic averages. Any subsequent nondirectional partial proofs which are submitted to the Commission for the purpose of documenting suspected conductivity changes are mathematically analyzed, point for point along each radial, against the complete proof nondirectional data (see Section 73.186(a)(5)). If the possibilities of distortion and changed RMS can be eliminated from the partial proof nondirectional pattern, then the extent of conductivity change along each radial can be determined and applied to the directional partial proof data revealing whether, in fact, observed changes in directional field strengths resulted from changes in the radiation pattern or simply from conductivity changes.

The notion of a seasonal proof, to the extent that some of the proof radials would be eliminated, strikes at the very heart of our approach which is an accurate determination of the nondirectional radiation pattern. Although, under the committee's suggestion, the minimum number of measurements on some radials would be raised from 10 to 20, we do not feel the value gained from additional data on these radials would be sufficient to offset the complete loss of data on the remaining radials. This is also the case for directional patterns where changes in radiation in some directions can affect radiation in other directions and assumptions of pattern symmetry are generally unreliable. The Commission encourages supplemental measurements in addition to the minimum of 10 per radial required by the Rules; this should not be accomplished, however, at the expense of fewer measurements on other radials.

Your last suggestion concerns the Commission's assignment of monitoring point limits in response to partial proofs of performance conducted following antenna repairs, refurbishment, construction or readjustment. Often such proofs result in a reduction in limits below those previously assigned because measurements were taken during periods of low conductivity or because antenna radiation in some directions was reduced. The committee suggests we not lower limits in such cases if the pattern remains in substantial conformance and the antenna parameters (phases and current ratios) are either essentially unchanged or, if changed, adequately justified. We believe this suggestion has merit and have, also on an experimental basis, ceased the practice of lowering limits based on partial proofs except when such limits would exceed measured values by more than 20%.

We feel that the current mandatory use of type-approved antenna monitors by directional stations and the widespread use of approved sample systems permit these changes in policy at this time without endangering in any way the technical integrity of our AM broadcasting system. Nonetheless, because of the significance of these changes, we intend to proceed on an experimental basis for at least a year, gaining the benefit of practical experience, before permanently adopting them. In addition, cases clearly falling beyond the scope of these policies will continue to be handled on a case-by-case basis.

We are hopeful that the changes we have initiated in response to your suggestions will provide many stations with operating tolerances sufficient to accommodate variations which, under our old policy, would have required a proof of performance and the filing of an application with the Commission. Again, I would like to express my sincere appreciation for the work done by your committee in bringing forth these suggestions.

Sincerely,

Richard J. Shiben,

Chief, Broadcast Bureau.

[FR Doc. 84-357 Filed 1-10-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 83-27; RM-4229]

Allow the Use of Volunteers to Prepare and Administer Operator Examinations in the Amateur Radio Service and Correction

AGENCY: Federal Communications Commission.

ACTION: Final Rules and Correction.

SUMMARY: This document corrects FCC rules regarding the use of voluntary and uncompensated volunteers to prepare and administer amateur operator examinations in order to eliminate unintended inconsistencies in the rules adopted in the *Report and Order* in this proceeding.

EFFECTIVE DATE: January 11, 1984.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Federal Communications Commission, Washington, D.C. 20554, (202) 632-4964.

Errata

In the matter of amendment of Parts 0, 1 and 97 of the Commission's rules to allow the use of volunteers to prepare and administer operator examinations in the Amateur Radio Service (PR Docket No. 83-27 RM-4229).

Released: December 30, 1983.

1. On September 22, 1983, the Commission adopted a *Report and Order*, 48 FR 45853 (October 6, 1983), in the above captioned proceeding. In the *Report and Order*, the Commission amended Parts 0, 1 and 97 of its Rules to allow the use of volunteers to prepare and administer operator examinations in the Amateur Radio Service.

2. In the rules set forth in the Appendix to the *Report and Order*, volunteers are given ten days from the time they administer an examination to forward candidates' applications to the VEC (§ 97.28(h)). However, VEC's are given only ten days from the date of the examination to forward candidates' applications to the FCC (§ 97.519(c)). This could result in a VEC having no time to perform the functions listed in § 97.519, and was not intended. The Commission intended to give the VEC adequate time to perform these functions.

3. At paragraph 28 of the *Report and Order*, The Commission stated: ". . . we have incorporated all of the present telegraph requirements and guidelines from our present rules." With respect to telegraphy examination grading, no changes were intended. However, § 97.29 (c) in the Appendix imposed an additional burden not included in the present rules of grading on the basis of

"one continuous minute." Inclusion of this new burden was not intended.

4. Sections 97.503 and 97.515 of the Rules in the Appendix cross-reference § 97.30. There is no § 97.30. The cross-references should be deleted.

5. Section 97.28(i)(2) provides for FCC retesting of any person who obtained an operator license through the volunteer examination process. It does not indicate what the FCC will do if such a person does not pass the examination. This was an inadvertent omission. Therefore, we are adding a new paragraph (j) to § 97.28 to clarify that an examinee who fails to appear for readministration of an examination or who fails to pass the retested examination element(s) will have his/her operator's license cancelled and will be issued a new operator license for the operator license class previously held by the examinee. We are also clarifying that FCC retesting applies only for examinations above the Novice Class.

6. Additionally, the definition of the term "Amateur Code Credit Certificate" in § 97.3 was inadvertently retained.

7. Finally, the wording of § 97.513 regarding where VEC's may coordinate examinations is unintentionally ambiguous. While this wording was designed to permit VEC's to coordinate examinations outside of the regions listed in § 97.507(b) (such as United States military bases in foreign countries), it was not intended to permit one regional VEC to coordinate examinations in another region.

8. Accordingly, the following corrections are made to the Appendix of the *Report and Order* in this proceeding:

§ 97.3 [Corrected]

1. Paragraph (aa) of § 97.3 is removed and reserved.

2. Section 97.28 is amended by revising paragraph (i) and adding a new paragraph (j) as follows:

§ 97.28 Examination administration.

* * * * *

(i) The FCC reserves the right, without qualification, to:

(1) Administer examinations itself; *or*

(2) Readminister examinations itself or under the supervision of an examiner designated by the FCC to any person who obtained an operator license above the Novice Class through the volunteer examination process.

(j) If a licensee fails to appear for readministration of an examination pursuant to paragraph (i)(2) of this section, or does not successfully complete the examination element(s) which are readministered, the licensee's operator license is subject to cancellation; in an instance of such cancellation, the licensee will be issued an operator license consistent with completed examination elements which have not been invalidated by not appearing for or failing readministration of an examination.

3. The words "for one continuous minute" are removed from the first sentence of paragraph (c) of § 97.29.

4. The cross-references to § 97.30 are removed from § 97.503(b) and from § 97.515.

5. The first two sentences of § 97.513 are revised to read:

§ 97.513 Scheduling of examinations.

A VEC will coordinate the dates and times for scheduling examinations (see § 97.26) throughout the region(s) it serves. Any VEC may also coordinate the scheduling of testing opportunities outside of the regions listed in § 97.507(b).

* * * * *

6. Paragraph (c) of § 97.519 is revised to read:

§ 97.519 Examination procedures.

* * * * *

(c) Forward the application within ten days of its receipt from the examiners to: Federal Communications Commission, Licensing Division, Private Radio Bureau, Gettysburg, Pennsylvania 17325.

* * * * *

(Secs. 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 84-344 Filed 1-10-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 31230-254]

Tanner Crab Off Alaska

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

ACTION: Emergency interim rule and request for comments.

SUMMARY: The Secretary of Commerce has determined that an emergency exists in the Tanner crab fishery conducted in parts of the Southeast District of Registration Area A and therefore closes the Tanner crab season in inshore waters on December 23, 1983. This action is necessary to bring the Tanner crab season in parts of the 3-to-200-mile fishery conservation zone (FCZ) within the Southeast District into conformity with the season in adjacent territorial waters, thereby removing a conflict between the Tanner crab season and exploratory king crab fisheries in localized areas thoughout internal waters of the Southeast District. It is intended to prevent confounding the State's king crab management regime, to reduce the risk of overfishing local king crab stocks, to encourage the development of new king crab fisheries, and to reduce potential enforcement costs.

DATE: This rule is effective from 12:01 a.m., Yukon Standard Time (YST), December 23, 1983, until 11:59 p.m. YST, February 9, 1984. Comments must be received on or before February 8, 1984.

ADDRESS: Comments should be addressed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Fishery Biologist, NMFS, Fishery Management Operations Branch), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic Tanner crab fishery in the FCZ off Alaska is managed under the fishery management plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP). This FMP was developed by the North Pacific Fishery Management Council (Council), approved by the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), and implemented by a final rule effective May 15, 1978 (43 FR 21170). The FMP has been amended eight times.

The 1982-83 Tanner crab season in territorial waters in the Southeast District began December 1, 1982, earlier than the season opening in most other parts of the State of Alaska. As a consequence, substantially greater numbers than expected of fishing vessels which intended ultimately to fish in other areas of the State when other seasons opened were attracted into the Southeast District. Local fishermen were preempted by non-local vessels, and the large number of vessels and fishing effort strained the State's capacity to manage the resource. In order to distribute fishing effort more evenly among the Tanner crab fisheries around the State, the Alaska State Board of Fisheries changed the season opening date for territorial waters of the

Southeast District from December 1 to February 10 so that the Tanner crab season in this district would start at approximately the same time as other Tanner crab seasons around the State. Thus, a disproportionately large number of Tanner crab vessels would not be able to concentrate in the Southeast District before moving to other districts where later season openings were scheduled.

The Council recognized the need for the Tanner crab season in the FCZ of the Southeast District to be consistent with the season in State waters for enforcement reasons. Further recognizing the need to adjust season opening and closing dates throughout the management unit as well as in this single instance, the Council proposed and approved Amendment 9 which establishes framework regulatory mechanisms to accomplish necessary changes to season opening and closing dates without the need for individual FMP amendments. This amendent has not yet been submitted to the Secretary of Commerce. Consequently, the 1983 Tanner crab season opened on December 1, 1983 in the FCZ portion of the Southeast District, whereas the season does not open until February 10, 1984 in Alaska State waters. In addition, the State of Alaska has authorized an exploratory king crab fishery for brown king crab in portions of its internal waters that are adjacent to portions of the FCZ that intrude into those internal waters. These FCZ intrusions are closed to the taking of king crab.

If the Tanner crab season in those portions of the FCZ that intrude into State internal waters is kept open before February 10, 1984, not only would State and Federal regulations be different, but king crab fishermen could harvest Tanner crab from king crab fishing areas in territorial waters and report the landings as being from the FCZ intrusions. Conversely, and perhaps more seriously, Tanner crab fishermen in the FCZ intrusions could harvest king crab from closed portions of the FCZ and report their landings as being from open areas within State waters. The taking of king crab under the guise of Tanner crab fishing from waters closed to king crab fishing could seriously jeopardize the king crab stocks in those waters. This latter situation could disrupt the development of new king crab fisheries by causing the State of Alaska to close its exploratory king crab fisheries to eliminate the illegal harvest of king crab from the FCZ intrusions.

Enforcement to prevent violations resulting a tanner crab fishery open in Federal waters but closed in adjacent State waters and a king crab fishery open in State waters but closed in the adjacent FCZ intrusions would be inordinately burdensome due to the need to increase surveillance and to conduct vessel tank inspections. Closing the Tanner crab season in the FCZ intrusions will reduce the amount of enforcement effort required.

It is not necessary to close the offshore portion of the FCZ because the offshore areas are open to the taking of king crab. This emergency rule is necessary to close the Tanner crab season from December 23, 1983 until February 10, 1984, when the Tanner crab season opens in adjacent State internal waters, only in the following areas of the FCZ, called the FCZ intrusions.

1. Waters of the FCZ in Cross Sound east of a line extending from Cape Spencer (58°12'45" N. latitude, 136°39'30" W. longitude) to Yakobi Rock (58°05'10" N. latitude, 136°33'40" W. longitude).

2. Waters of the FCZ in Sitka Sound east of a line extending from Cape Edgecumbe (56°59'45" N. latitude, 135°51'00" W. longitude) to Point Woodhouse (56°50'05" N. latitude, 135°32'15" W. longitude).

3. Waters of the FCZ in Lower Chatham Strait and Frederick Sound north and east of a line extending from Cape Ommaney (56°10'00" N. latitude, 134°40'20" W. longitude) to Motion Point (55°55'00" N. latitude, 134°10'00" W. longitude).

4. Waters of the FCZ in Iphigenia Bay and Summer Strait north and east of a line extending from Helm Point (55°49'30" N. latitude, 134°17'00" W. longitude) to Cape Ulitka (55°33'45" N. latitude, 133°43'35" W. longitude).

Classification

The Assistant Administrator has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that the reasons justifying promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and a prior opportunity for public comment, or to delay for 30 days the effective date of the rule under the provisions of 5 U.S.C. 553 (b) and (d). Comments are invited for a period of 30 days following the effective date of this rule. Comments should be sent to the Regional Director at the address above.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the Alaska Coastal Management Program, as required by section 307(c) of the Coastal Zone Management Act of 1972 and its implementing regulation at 15 CFR Part 930, Subpart C. This determination has been submitted for review by the responsible state agency.

The Assistant Administrator prepared an environmental assessment (EA) for this action and concluded that no significant impact on the human environment will result from its implementation. A copy of the EA is available from the Regional Director at the address above.

The NOAA Administrator has determined that rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. He made his decision on the basis of the analysis contained in the EA mentioned above. This emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why following the procedures of that order is impractical.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic impact upon a substantial number of small domestic entities for the purpose of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The certification was made on the basis of the analysis contained in the EA.

This rule does not contain a collection of information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 671

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: January 6, 1984.

Carmen J. Blondin,

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

For the reason set out in the preamble, 50 CFR Part 671 is amended as follows:

PART 671—TANNER CRAB OFF ALASKA

1. The authority citation for Part 671 reads as follows:

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

2. In § 671.26, paragraph (c)(2)(i) is revised to read as follows:

§ 671.26 Season, general gear restrictions, and registration areas.

* * * * *

(c) * * *

(2) * * *

(i) Tanner crab may be taken in the Southeast District from December 1 through May 1, subject to adjustment by the Secretary under § 671.27 of this part, except that in the following areas, Tanner crab may be taken from February 10 through May 1 only, subject to adjustment by the Secretary under § 671.27 of the part.

(A) Cross Sound east of a line extending from Cape Spencer (58°12'45" N. latitude, 136°39'30" W. longitude) to Yakobi Rock (58°05'10" N. latitude, 136°33'40" W. longitude).

(B) Sitka Sound east of a line extending from Cape Edgecumba 56°59'45" N. latitude, 135°51'00" W. longitude) to Point Woodhouse (56°50'05" N. latitude, 135°32'15" W. longitude).

(C) Lower Chatham Strait and Frederick Sound north and east of a line extending from Cape Ommaney (56°10'00" N. latitude, 134°40'20" W. longitude) to Motion Point (55°55'00" N. latitude, 134°10'00" W. longitude).

(D) Iphigenia Bay and Summer Strait north and east of a line extending from Helm Point (55°49'30" N. latitude, 134°17'00" W. longitude) to Cape Ulitka (55°33'45" N. latitude, 133°43'35" W. longitude).

* * * * *

[FR Doc. 84-734 Filed 1-9-84; 8:50 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 7
Wednesday, January 11, 1984

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

7 CFR Part 991

Hops of Domestic Production; Administrative Rules and Regulations Governing Additional Allotment Base

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given of a proposal to issue two million pounds of additional allotment base to new producers under the Federal marketing order for domestic hops. This proposal is intended to improve the flexibility of the marketing order in meeting trade demand fluctuations.

DATE: Comments due February 10, 1984.

ADDRESSES: Written comments should be sent to: Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written materials should be submitted, and they shall be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250; (202) 447-5053.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This proposal would amend Subpart—Administrative Rules and Regulations (7 CFR 991.130–991.601; 48 FR 13013) by adding a new § 991.138a to provide for the issuance of additional allotment base to new producers. This subpart is operative under Order No. 991, as amended (7 CFR Part 991), regulating the handling of hops of domestic production, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposed rule is based on an unanimous recommendation of the Hop Administrative Committee.

During the past five years, the salable percentage has been in excess of 100 percent. At the same time, there were large fluctuations in trade demand for hops. Future responsiveness of the order to changes in trade demand might be improved if there were a moderate upward adjustment in the total amount of base with an additional number of permanent producers under the order. Such an action would be consistent with the Act and § 911.38(b) of the order (7 CFR 991.38(b)). In addition, it would be in furtherance of the USDA guideline objective of eliminating barriers to entry in marketing order programs.

The proposal provides for the Committee to make two million pounds of additional allotment base available to new producers, about three percent of existing base. A "new producer" would be defined as any person who is not holding allotment base on the date this notice is issued.

The proposal requires the Committee to determine the size and number of economic units of allotment base to be made available in order to ensure that economically feasible amounts of base are distributed. The Committee would include that information in its announcements informing new producers when to apply for this allotment base. The application for this allotment base will include a statement that the applicant will make a bona fide effort to produce the annual allotment referable to such allotment base. This additional allotment base would be issued on a random basis by placing all applicants' names in a lot for drawing.

Allotment base issued under this proposal would not be transferrable for two years after the date of issuance by the Committee except, in the following circumstances: (1) In the event of sale or other transfer of a producer's production facilities, the base could be transferred to the person acquiring and continuing the use of such facilities; (2) in the event of death of the producer, the entire base could be transferred to such producer's heirs or beneficiaries (3) if a base is held jointly and the joint venture is terminated, the entire base could be transferred to one of the joint venture holders, or divided among them.

List of Subjects in 7 CFR Part 991

Marketing agreements and orders; and Hops.

PART 991—[AMENDED]

Therefore, Subpart—Administrative Rules and Regulations (7 CFR 991.130–991.601; 48 FR 13013) is proposed to be amended by adding § 991.138a to read as follows:

§ 991.138a Additional allotment base.

Pursuant to § 991.38(b), the Committee shall grant two million pounds of additional allotment base to new producers in accordance with the following procedures:

(a) "New producer" means any person who is not holding an allotment base on (December 29, 1983).

(b) Allotment bases granted under this section shall be for hops of any variety planted after the effective date of this rule.

(c) The Committee shall: Determine the size and number of economic units of additional allotment base to be made available to new producers, and the Committee shall include that information in its announcements to new producers informing them when to submit requests for allotment base.

(d) Any new producer desiring allotment base pursuant to this section must file a written application with the Committee, by a time specified by it, containing the following information:

(1) The location and number of acres which the applicant will plant to hops for harvesting during the 1984–85 marketing year.

(2) A statement that the applicant will make a bona fide effort to produce the annual allotment referable to such allotment base.

(e) The names of all applicants shall be placed in a lot for drawing. After the drawing the Committee shall immediately notify each applicant whose name was drawn and issue that person allotment base in the appropriate economic unit.

(f) Additional allotment base issued under this section shall not be transferrable for two years after the date of issuance by the Committee except in the following circumstances:

(1) In the event of sale or other transfer of a producer's production facilities, the base may be transferred to the person acquiring and continuing the use of such facilities; (2) in the event of death of the producer, the entire base may be transferred to such producer's heirs or beneficiaries; and (3) if a base is held jointly and the joint venture is terminated, the entire base may be transferred to one of the joint venture holders, or divided among them.

Dated: December 29, 1983.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 84-731 Filed 1-10-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 991

[Docket No. AO-352-A-2]

Hops of Domestic Production; Formal Rulemaking Proceeding

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of opportunity to submit proposals.

SUMMARY: The Department of Agriculture invites interested persons to submit proposals to amend the marketing order for domestically produced hops. A formal rulemaking hearing will be held early in 1984 to receive evidence on amendatory proposals; included should be proposals to eliminate barriers to entry, and to limit transfer of allotment base.

DATE: Proposals must be received by March 12, 1984.

ADDRESS: Send four copies of any proposals in writing to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, where they will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250; (202) 447-5053.

SUPPLEMENTARY INFORMATION: A notice to hold a public hearing to amend the hop marketing order will be announced early in 1984. This hearing will be held at a convenient location in the area of production. At the hearing, testimony will be received on proposals to amend the order.

Considerable controversy has existed within the domestic hop industry for several years on matters relating to Marketing Order No. 991 for hops of domestic production, primarily in regard to entry of new producers and the ability of existing hop producers to expand their operations. The controversy has been of such magnitude and duration that an amendment of the order may be necessary. Accordingly, USDA now is soliciting amendatory proposals to be included in a notice of hearing, and especially proposals to eliminate entry barriers and to limit transfer of allotment base by producers.

Any proposals submitted should cite specific sections of the hop marketing order (7 CFR Part 991) to which they relate and should reference Docket No. AO-352-A-2.

Hop producers, handlers, and the public have until March 12, 1984 to submit written proposals to amend the hop marketing order. Soon after this date, the Administrator will review the proposals in accord with 7 CFR 900.3, and notice of hearing will be issued and published in the Federal Register announcing the amendatory proposals, and the location, date, and time of the public hearing.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Signed at Washington, D.C. on January 4, 1984.

Vern F. Highley,

Administrator, Agricultural Marketing Service.

[FR Doc. 84-732 Filed 1-10-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Del Bonita and Wildhorse, Montana; Change in Hours of Service

AGENCY: Customs Service, Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposal to change the hours of service currently provided at the Customs port of entry of Del Bonita, Montana, and the Customs station of Wildhorse, Montana, located on the U.S.-Canadian border, in the Great Falls, Montana, Customs District.

The change, which was coordinated with the Immigration and Naturalization Service (INS), was proposed to enable Customs and INS to obtain more efficient use of their personnel, facilities, and resources. However, after consideration of the comments received in response to the proposal and further review of the matter, it has been determined that service at this port and station should continue to be provided at the current hours.

DATE: Withdrawal effective January 11, 1984.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

In general, §101.6, Customs Regulations (19 CFR 101.6), provides that each Customs office shall be open for the transaction of Customs business between the hours of 8:30 a.m. and 5:00 p.m. on all days of the year except Saturdays, Sundays, and national holidays. It also provides that services performed outside a Customs office generally shall be furnished between the hours of 8:00 a.m. and 5:00 p.m. However, because of local conditions, different but equivalent hours may be necessary to maintain adequate and efficient service.

Del Bonita and Wildhorse, located in the Great Falls, Montana, Customs District, are two man border crossings, jointly staffed by personnel from Customs and the Immigration and Naturalizaiton Service (INS). The current hours of service at these locations are as follows:

Del Bonita

June 1-September 15—8:00 a.m.-9:00 p.m.

September 16-May 31—9:00 a.m.-6:00 p.m.

Wildhorse

May 15-September 30—8:00 a.m.-9:00 p.m.

October 1-May 14—8:00 a.m.-5:00 p.m.

Because traffic at Del Bonita and Wildhorse did not justify the current hours of service, by notice published in the Federal Register on June 14, 1983 (48 FR 27265), it was proposed to change the hours of service for both locations as follows:

May 15-September 30—9:00 a.m.-9:00 p.m.

October 1-May 14—9:00 a.m.-5:00 p.m.

As stated in that notice, this change would have placed both locations on the same operating schedule, reduce overall operating costs, including overtime expenditures, and allow for better scheduling and utilization of available office staff. Before taking any final action, however, public comments were solicited on the proposed change. Comments were to be received on or before August 15, 1983.

Discussion of Comments

Forty-three comments were received in response to the notice. A number of comments apparently were based on erroneous newspaper accounts indicating that Customs would cease weekend service at Del Bonita. This was not even suggested in the proposal. Weekend service will be continued.

The primary concerns of the commenters were the possible adverse economic impact the proposal might have on area businesses, as well as inconvenience for the traveling public. Customs believes that any adverse economic impact or inconvenience would have been minimal. In fact, service would actually have been increased by 3 hours over current hours at Del Bonita during the last 2 weeks of May and the last 2 weeks of September. Moreover, the new hours of service would have eliminated overtime costs which are unnecessary in light of the fact that the volume of traffic at these two locations does not justify the additonal hours of service.

However, after further review of the matter, it was determined that the savings to Customs from this proposal would be minimal. In addition, Canadian Customs has expressed some concern over the change in hours of service. In view of these factors, and the comments received in response to the notice, Customs has determined that the proposed change in hours of service at Del Bonita and Wildhorse is not justified. Accordingly, the proposal is withdrawn.

Drafting Information

The principal author or this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: November 22, 1983.

Alfred R. De Angelus,

Acting Commissioner.

[FR Doc. 84-706 Filed 1-10-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 16, 20, and 23

Proposed Provisions for Estates of Indians of the Five Civilized Tribes, Financial Assistance and Social Services Program, and Indian Child Welfare Act

August 3, 1983.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs proposes to amend existing Estates of Indians of the Five Civilized Tribes regulations to reflect the consolidation of the Muskogee Field Office of the Solicitor with the Tulsa Regional Office of the Solicitor.

The Bureau proposes also to amend existing Financial Assistance and Social Services Program regulations to implement changes as directed by the congressional directive in the Fiscal Year 1983 Appropriations Conference Report No. 97-978, dated December 17, 1982. The report states on page 20 that: "The managers direct the Bureau to move expeditiously to implement changes in the general assistance program to bring payments into conformance with State payments in those States where the standard of need exceeds actual payments. The regulations shall provide flexibility for the Bureau to adjust payments as such payments may be adjusted by the States." This practice by some State public welfare agencies has been employed over the years to accommodate State budgetary constraints, and is commonly referred to as a "Rateable Reduction".

Other revisions of Financial Assistance and Social Services program regulations are proposed to clarify the definition of "near reservation", and to emphasize the Bureau's responsibility to administer general assistance programs only in localities where such programs will not duplicate existing general assistance services.

Amendments, additions and corrections are also proposed for the Indian Child Welfare Act regulations. In those regulations, this proposed rule intends to: (1) define the term "multi-service Indian center"; (2) provide address corrections for the Bureau's Minneapolis Area Office and Sacramento Area Office; (3) include a new section to assure timely filing of vouchers for legal fees; (4) include multi-service Indian centers as eligible grant applicants; (5) allow multi-service Indian centers to be eligible to apply for grants to serve designated "near reservation" areas; (6) enable the Commissioner to approve multi-year grants; (7) correct a printing error appearing in the existing regulations; (8) add "date of birth" to the list of identifying data required of State courts when notifying the Bureau of final decrees or adoptive orders for any Indian child; and (99) make other changes to coincide with the revisions outlined above.

DATES: Comments must be received on or before Febrary 10, 1984.

ADDRESS: Written comments should be addressed to: Chief, Division of Social Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: Raymond V. Butler, Chief, Division of Social Services, Bureau of Indian Affairs, telephone number: (202) 343-6434.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs is publishing a proposed rule which amends 25 CFR 16.1(c), Definitions. The amended paragraph reflects the consolidation of the Muskogee Field Office of the Solicitor with the Tulsa Regional Office of the Solicitor.

The proposed rule will also amend § 20.1(s) and (w), Definitions. The amended paragraphs incorporate the changes directed by the congressional report.

With the enactment of the 1981 Omnibus Budget Reconciliation Act, which made many changes in the Aid to Families with Dependent Children (AFDC) program, many States increased the standard of need and imposed a rateable reduction on actual payment levels to maximize available funding in the Federal/State matching formula. (An American Public Welfare Association report issued December 28, 1982, indicated that 21 of the 50 States had increased their standards of need.) This situation created some marked differences between the standards of need and the actual levels of payment, which brought the issue to the attention of the Congress. The Bureau has had a long-standing policy (since 1944) of making general assistance payments at 100 percent of the established standard of need in the State wherein the recipient resides. However, since the general assistance program is federally funded, the Bureau, to avoid placing excessive hardship on recipients, is proposing a "floor" or minimum payment level of not less than one-third of the national poverty levels as established annually by the Department of Commerce. Also, as is the pracuce in States where th level of payment is less than the standard of need, the Bureau proposes to permit the offset of any available income to an applicant or recipient up to the extent of the dollar difference between the actual payment level and the standard of need.

Paragraph (a)(3) of 25 CFR 20.20, General (Eligibility Conditions), is amended to clarify and strengthen the

definition of "near reservation" as set forth in § 20.1(r).

It is proposed also to amend 25 CFR 20.21(c), General Assistance, by deleting the word "comparable". The deletion clarifies the Bureau's responsibility to administer general assistance programs only in areas where such programs would not duplicate existing State, county and/or municipal general assistance programs.

In 25 CFR 23.2, Definitions, paragraph (n) is redesignated as § 23.2(o) in order to incorporate the definition of "multi-service Indian center", which is added as a new paragraph (n). This redesignation is proposed to enable urban areas serving more than one tribe to apply for a grant under this authorization.

Paragraph (b)(2) of § 23.11, Notice, is amended to reflect a change of address for the Minneapolis Area Office, and paragraph (b)(12) is amended to correct the Zip Code for the Sacramento Area Office.

Paragraph § 23.13(e), Payment for appointed counsel in State Indian child custody proceedings, is amended by adding a new paragraph § 23.13(e)(3). This addition is being proposed to ensure timely filing of vouchers for attorneys' fees, and to enable the Bureau to issue payments for these fees from the proper appropriation.

Paragraph (a) of § 23.21, Eligibility requirements, is amended to include multiservice Indian centers as eligible grant applicants; paragraph (b) of the same section is amended to delete the word "annually" to coincide with the proposed addition of 25 CFR 23.37 below.

In § 23.25, Application selection criteria, paragraph (a) is corrected due to a typographical error. In line 1 of that paragraph, the word "of" is changed to "or".

Also in § 23.25, paragraph (c) is amended to include the governing body of a multi-service Indian center in order to assure that such centers will be eligible to apply for a grant under this part.

In § 23.26, Request from tribal governing body or Indian organization, it is proposed to add paragraph (c), thereby authorizing eligibility under this part for multi-service Indian service centers to apply for and receive grants to provide services in a designated "near reservation" area.

It is proposed also to amend paragraphs (a) and (b) of § 23.27, Grant approval limitation, in order to include the term "multi-service Indian center", thereby making § 23.27 consistent with other proposed changes in the rule.

A new § 23.37, Multi-year developmental grants, is being added to the rule. This proposed addition authorizes the Commissioner to approve multi-year grant awards, thus providing grantees sufficient time to establish and implement a program of services before again being required to compete for a grant. Since initiation of the Indian Child Welfare Act grant program, grantees have experienced numerous administrative difficulties in operating programs on a one-year-only basis, and many grantees have requested a change such as the one being proposed.

This rule document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environment Policy Act of 1969.

The information collection requirement contained in 25 CFR 23 has been approved by the Office of Management and Budget under 44 U.S.C. 3504(h) *et seq.* and assigned clearance number 1076-0006. The information is being collected to determine Indian Child Welfare Act program compliance and eligibility. Response is required to obtain Indian Child Welfare Act grant funding.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and 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 sole effect of the proposed revision to 25 CFR Part 20 will be to require adherence to a "rateable reduction" in general assistance payments to eligible Indians. The revisions of 25 CFR Part 23 will not have significant economic effect other than the addition to 25 CFR 23.37, which will affect the timeframe under which Indian Child Welfare Act grants will be available. Revision of 25 CFR 16.1(c) is necessitated by the consolidation of the Muskogee Field Office with the Tulsa Regional Office.

This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary-Indian Affairs by 209 DM 8.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule. The primary author of this document is Raymond V. Butler, Chief, Division of Social Services, Bureau of Indian Affairs, telephone number (202) 343-6434.

List of Subjects

25 CFR Part 16

Estates and Indians-law.

25 CFR Part 20

Administrative practice and procedure, Child welfare, Indians-Social welfare, Public assistance programs.

25 CFR Part 23

Notice of involuntary child custody proceedings and payment for appointed counsel, Grants to Indian tribes and Indian organizations for Indian child and family programs, Grant revision, cancellation or assumption, Administrative provisions, Assistance to state courts, Child welfare.

For the reasons set forth in the preamble, Parts 16, 20 and 23 of Title 25 of the Code of Federal Regulations are proposed to be amended as follows:

PART 16—ESTATES OF INDIANS OF THE FIVE CIVILIZED TRIBES

1. Paragraph (c) of § 16.1 is revised to read as follows:

§ 16.1 Definitions.

* * * * *

(c) The term "Field Solicitor" means the Regional Solicitor, Southwest Region, Page Belcher Federal Building, P.O. Box 3156, Tulsa, Oklahoma 74101.

* * * * *

PART 20—FINANCIAL ASSISTANCE AND SOCIAL SERVICES PROGRAM

2. Paragraphs (s) and (w) of § 20.1 are revised to read as follows:

§ 20.1 Definitions.

* * * * *

(s) "Need" means the deficit between resources and money amounts necessary to meet the cost of basic items and/or special items by the applicant or recipient as established pursuant to the Social Security Act by the public welfare agency of the State in which the applicant or recipient resides, and which shall be used by the Bureau in determining the amount of financial assistance to be provided to the applicant or recipient residing in that State. However, in any State where the level of payment is less than the standard of need, the Bureau shall use the level of actual payment in

determining the amount of financial assistance to be provided to the applicant or recipient residing in that State, except that no payment level shall be less than one-third of the national annual poverty level as published by the U.S. Department of Commerce.

* * * * *

(w) "Resources" means services or income available to an Indian person or family, unless excluded by Federal public assistance or Supplemental Security Income statute from being considered as income for the purpose of determining financial need. However, in any State where the level of payment is less than the standard of need, available net income shall be exempt to the extent of the dollar difference between the level of payment and the standard of need.

* * * * *

3. Paragraph (a)(3) of § 20.20 is revised to read as follows:

§ 20.20 General.

* * * * *

(a) * * *

(3) The applicant must reside near reservation as specifically defined in § 20.1(r) and be a member of the tribe that requested designation of the near reservation service area.

* * * * *

4. Paragraph (c) of § 20.21 is revised to read as follows:

§ 20.21 General assistance.

* * * * *

(c) They reside in areas where general assistance is not available or is not being provided to all residents on the same basis from a State, county, municipality or other local public jurisdiction.

* * * * *

PART 23—INDIAN CHILD WELFARE ACT

5. Paragraph (n) of § 23.2 is redesignated as paragraph (o) and a new paragraph (n) is added to read as follows:

§ 23.2 Definitions.

* * * * *

(n) Multi-service Indian center means a social service center operated by an Indian organization and located off-reservation, or in a designated "near" reservation area having an established program of social service delivery to a clientele of varied tribal affiliations, but with no more than one-half of the clientele from any one tribe.

* * * * *

6. Paragraphs (b)(2) and (b)(12) of § 23.11 are revised to read as follows:

§ 23.11 Notice.

* * * * *

(b) * * *

(2) For proceedings in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio or Wisconsin, notice should be sent to the following address: Minneapolis Area Director, Bureau of Indian Affairs, Chamber of Commerce Building—6th Floor, 15 South Fifth Street, Minneapolis, Minnesota 55402.

* * * * *

(12) For proceedings in California or Hawaii, notice should be sent to the following address: Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

* * * * *

7. A new paragraph (e) is added to § 23.13 to read as follows:

§ 23.13 Payment for appointed counsel in State Indian child custody proceedings.

* * * * *

(e) The Area Director shall authorize the payment of attorney fees and expenses in the amount requested in the voucher approved by the court unless:

(1) The court has abused its discretion under State law in determining the amount of the fees and expenses; or

(2) The client has not been previously certified as eligible under paragraph (c) of this section: or

(3) The voucher is not submitted within ninety (90) days after completion of the legal action involving a client certified as eligible for payment of legal fees under paragraph (b) of this section.

* * * * *

8. Paragraphs (a) and (b) of § 23.21 are revised to read as follows:

§ 23.21 Eligibility requirements.

(a) The governing body of any tribe or tribes, or any off-reservation Indian organization, or any multi-service Indian center located off-reservation or in an area designated by the Commissioner as "near" reservation may apply for a grant individually or as a consortium under this part.

(b) Each tribe, off-reservation Indian organization, multi-service Indian center or consortium may submit only one grant application during an application period. The application period during which grant applications will be accepted shall be published as a notice in the Federal Register.

* * * * *

9. Paragraphs (a) and (c) of § 23.25 are revised to read as follows:

§ 23.25 Application selection criteria.

(a) The Commissioner or his/her designated representative shall select for grants under this part those proposals which will in his/her judgment best promote the purposes of Title II of the Act. Such selection will be made through a review process in which each application will be scored competitively, taking into consideration the content of the application as required in § 23.24, and the following factors:

* * * * *

(c) Selection for grants under this part for "on or near" reservation programs shall be limited to the governing body of the tribe to be served by the grant, or the governing body of a multi-service Indian center. The governing body of the tribe may make subgrant or subcontract with another organizational entity, including but not limited to an Indian organization, subject to the provisions of § 23.36.

* * * * *

10. A new paragraph (c) is added to § 23.26 to read as follows:

§ 23.26 Request from tribal governing body or Indian organization.

* * * * *

(c) The Bureau shall only make a grant under this part for multi-service Indian center program located off-reservation or in a designated "near" reservation area when officially requested to do so by the governing body of the multi-service Indian center. The request may be in one of the forms prescribed in paragraph (a) of this section.

* * * * *

11. Paragraphs (a) and (b) of § 23.27 are revised to read as follows:

§ 23.27 Grant approval limitation.

(a) *Area Office preliminary approval.* Authority for preliminary approval of a grant application under this part shall be with the Area Director when the intent, purpose and scope of the grant proposal pertains solely to an Indian tribe or tribes, or to an Indian organization representing an off-reservation community or multi-service Indian Center located within that Area Director's administrative jurisdiction.

(b) *Central Office preliminary approval.* Authority for preliminary approval of a grant application under this part shall be with the Commissioner when the intent, purpose and scope of the grant proposal pertains to Indian tribes, off-reservation communities or Indian organizations, or multi-service Indian centers representing more than one Area Office's administrative

jurisdiction, but located within the Commissioner's overall jurisdiction.

* * * * *

12. A new § 23.37 is added to read as follows:

§ 23.37 Multi-year developmental grants.

The Commissioner may, at his/her discretion, approve multi-year developmental grants for up to a maximum of three (3) years to eligible applicants, subject to the availability of funds in accordance with 25 CFR 23.27(e), and subject also to past performance by the grantee as stipulated in § 23.27(c)(3).

(a) Upon announcement of acceptance of applications for multi-year grants, the applicant shall prepare a grant application in accordance with 25 CFR 23.24, 23.25 and 23.26, placing primary emphasis on the first year's activities, but also providing sufficient information on activities proposed for subsequent years to allow the Bureau, utilizing these regulations, to make a judgment of the relevance and potential effectiveness of future activities.

(b) The formula published in the Federal Register in accordance with 25 CFR 23.27(e)(1) will establish the funding level for the first year of the multi-year grant.

(c) If, in the judgment of the Commissioner, the grantee's proposed program activity for subsequent years is acceptable, funding shall be approved in accordance with 25 CFR 23.27(e)(1), depending on the appropriation for that grant program year and on the grantee's approved funding request.

(d) In each year subsequent to the first year of funding, the grantee must comply with the requirements of §§ 23.24, 23.25, 23.26 and 23.27. In compliance with § 23.29, technical assistance will be provided to grantees through Bureau Agency and/or Area Offices.

(e) If existing grantees are not re-approved for a second or third year of funding, a grant application period will be announced, and the funds made available to other eligible grant applications.

* * * * *

13. Paragraph (a)(1) of § 23.81 is revised to read as follows:

§ 23.81 Recordkeeping and information availability.

* * * * *

(a)(1) The name of the child, the birth date of the child, the tribal affiliation of the child and the Indian blood quantum of the child as required by section 301(a) of Public Law 95-608 (25 U.S.C. 1951).

(Catalog of Federal Domestic Assistance Program—15.113 Indian—General Assistance; 15.144—Indian Child Welfare—Title II Grants)

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 84-647 Filed 1-10-84; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-44-78]

Cooperative Hospital Service Organizations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the treatment of certain cooperative hospital service organizations. Changes to the applicable tax law were made by the Revenue and Expenditure Control Act of 1968 and by the Tax Reform Act of 1976. The proposed regulations would provide the public with the guidance needed to comply with those Acts and would affect organizations seeking to qualify for tax exempt status as organizations described in section 501(e).

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 12, 1984. The amendments are proposed to be effective generally for taxable years ending after June 28, 1968. In the case of organizations performing clinical services, however, the amendments are proposed to be effective for taxable years ending after December 31, 1976.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-44-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Harry Beker of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention CC:EE) (202-566-6212) (not a Toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 170(b)(1)(A) and 501(e) of the Internal Revenue Code of 1954. These proposed amendments are to be issued to conform the regulations to section 109(a) of the Revenue and Expenditure Control Act of 1968 (82 Stat. 269) and section 1312(a) of the Tax Reform Act of 1976 (90 Stat. 1730) and are issued under the authority contained in section 7805 of the Code (68A Stat. 917; 26 U.S.C. 7805).

History

Prior to the enactment of section 501(e), the law as to the tax status of shared hospital service organizations was uncertain. The Service took the position that if two or more tax exempt hospitals created an entity to perform commercial services for them, that entity was not entitled to exemption. Rev. Rul. 54-305, 1954-2 C.B. 127. That position, however, was rejected in *Hospital Bureau of Standards and Supplies, Inc. v. United States,* 158 F. Supp. 560 (Ct. Cl. 1958). After expressly noting the uncertainty in the law and recognizing the ever increasing cost of hospital services, Congress enacted subsection (e) of section 501, effective for taxable years ending after June 28, 1968.

Cooperative Hospital Service Organizations in General

The purpose of section 501(e) is to exempt from taxation a cooperative organization which provides specified services to exempt hospitals. These cooperatives are organized and operated to achieve economies of scale for their patron-hospitals by performing administrative and other similar services on a joint basis and are afforded tax treatment which is similar to that of their patron-hospitals. Section 501(e) limits the services which such a cooperative may perform on a centralized basis to the following: data processing, purchasing, warehousing, billing and collection, food, clinical, industrial engineering, laboratory, printing, communications, record center, and personnel. In 1969, the Service emphasized that an organization seeking to qualify under section 501(e) may perform only one or more of these specifically enumerated services. Rev. Rul. 69-160, 1969-1 C.B. 147, held that a hospital service organization which performed laundry services for its patron-hospitals did not meet the requirements of section 501(e) and therefore did not qualify for exemption under any other provision of the Code. That position has been upheld in *HCSC-Laundry* v. *United States,* 450 U.S. 1 (1981). The proposed regulations therefore limit the activities of cooperative hospital service organizations solely to those specified in section 501(e) which is the exclusive and

controlling section governing the exemption of such organizations.

The proposed regulations also require that the specified services must be performed solely for two or more patron-hospitals, all of which are recognized as exempt under section 501(c)(3) or owned by the United States or a State or one of its political subdivisions. The proposed regulations recognize, however, that the specified services may also be performed for other cooperative hospital service organizations meeting the requirements of section 501(e). Moreover, because a section 501(e) organization may only perform specified services for specified organizations, it cannot have unrelated business taxable income as defined in section 512 (other than that indicated in § 1.501(e)–1 (b)(4)).

The proposed regulations additionally require that the hospital service organization be organized and operated on a cooperative basis, that any capital stock be held by its patron-hospitals (no dividends, however, may be paid on such stock), and that the organization allocates or pays all net earnings to such patrons within 8½ months of the close of its taxable year. Allocations or payments must be made on the basis of the percentage of the services performed for each patron-hospital.

Although section 501(e)(2) requires that "all net earnings" be allocated or paid, the proposed regulations recognize that the retention of an amount for retiring indebtedness, expanding services or for other necessary purposes is not inconsistent with the requirements of section 501(e). In addition, although all outstanding capital stock of the organization must be held by its patron-hospitals, the proposed regulations recognize that not all patron-hosptials transacting business with the organization need have voting rights in the organization. However, the proposed regulations require that, where the organization has both voting and nonvoting patron-hospitals, the percentage of services done with nonvoting patrons may not exceed the percentage of services done with voting patrons. This provision is applicable to both stock and membership cooperatives so that either type of cooperative must do more than 50 percent of its business with voting patrons.

Conforming changes are also made under § 1.170A–9(c)(1) and § 1.501(k)–1 of the Income Tax Regulations.

Nonapplicability of Executive Order 12291

The Treasury Department has determined that this Regulation is not subject to review under Executive Order 12291 or the Treasury or Office of Management and Budget implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the regulatory flexibility act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The requirements relating to collection of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB send copies of those comments to the Service.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Harry Beker of the Employee Plans and Exempt Organizations Division of the Office of Chief Council, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.61–1—1.291–4

Income taxes, Deductions.

26 CFR 1.501(a)–1—1.528–10

Income taxes, Exempt organizations, Cooperatives.

Proposed Amendments to the Regulations

Accordingly, it is proposed to amend the Income Tax Regulations, 26 CFR Part 1, as follows:

Paragraph 1. Paragraph (c)(1) of § 1.170A–9 is revised to read as follows:

§ 1.170A–9 Definition of section 170(b)(1)(A) organization.

* * * * *

(c) *Hospitals and medical research organizations*—(1) *Hospitals.* An organization (other than one described in subparagraph (2) of this paragraph) is described in section 170(b)(1)(A)(iii) if:

(i) It is a hospital, and

(ii) Its principal purpose of function is the providing of medical or hospital care or medical education or medical research.

The term "hospital" includes (*a*) Federal hospitals and (*b*) State, county, and municipal hospitals which are instrumentalities of governmental units referred to in section 170(c)(1) and otherwise come within the definition. A rehabilitation institution, outpatient clinic, or community mental health or drug treatment center may qualify as a "hospital" within the meaning of subdivision (i) of this subparagraph if its principal purpose or function is the providing of hospital or medical care. For purposes of this subdivision, the term "medical care" shall include the treatment of any physical or mental disability or condition, whether on an inpatient or outpatient basis, provided the cost of such treatment is deductible under section 213 by the person treated. An organization, all the accommodations of which qualify as being part of an "extended care facility" within the meaning of 42 U.S.C. 1395x(j), may qualify as a "hospital" within the meaning of subdivision (i) of this subparagraph if its principal purpose or function is the providing of hospital or medical care. For taxable years ending after June 23, 1968, the term "hospital" also includes cooperative hospital service organizations which meet the requirements of section 501(e) and § 1.501(e)–1. The term "hospital" does not, however, include convalescent homes or homes for children or the aged, nor does the term include institutions whose principal purpose or function is

to train handicapped individuals to pursue some vocation. An organization whose principal purpose or function is the providing of medical education or medical research will not be considered a "hospital" within the meaning of subdivision (i) of this subparagraph, unless it is also actively engaged in providing medical or hospital care to patients on its premises or in its facilities, on an inpatient or outpatient basis, as an integral part of its medical education or medical research functions. See, however, subparagraph (2) of this paragraph with respect to certain medical research organizations.

* * * * *

§ 1.501(e)-1 [Redesignated as § 1.501(k)-1]

Par. 2. Section 1.501(e)-1 is redesignated as § 1.501(k)-1.

Par. 3. The following new section is added immediately after § 1.501(d)-1:

§ 1.501(e)-1 Cooperative hospital service organizations.

(a) *General rule.* Section 501(e) is the exclusive and controlling section under which a cooperative hospital service organization can qualify as a charitable organization. A cooperative hospital service organization which meets the requirements of section 501(e) and this section shall be treated as an organization described in section 501(c)(3), exempt from taxation under section 501(a), and referred to in section 170(b)(1)(A)(iii) (relating to percentage limitations on charitable contributions). In order to qualify for tax exempt status, a cooperative hospital service organization must—

(1) Be organized and operated on a cooperative basis,

(2) Perform, on a centralized basis, only one or more specifically enumerated services which, if performed directly by a tax exempt hospital, would constitute activities in the exercies or performance of the purpose or function constituting the basis for its exemption, and

(3) Perform such service or services solely for two or more patron-hosptials as described in paragraph (d) of this section.

(b) *Organized and operated on a cooperative basis*—(1) *In general.* In order to meet the requirements of section 501(e), the organization must be organized and operated on a cooperative basis (whether or not under a specific statute on cooperatives) and must allocate or pay all of its net earnings within 8½ months after the close of the taxable year to its patron-hospitals on the basis of the percentage of its services performed for each patron. For the recordkeeping requirements of a section 501(e) organization, see § 1.521-1(a)(1).

(2) *Percentage of services defined.* The percentage of services performed for each patron-hospital may be determined on the basis of either the value or the quantity of the services provided by the organization to the patron-hospital, provided such basis is realistic in terms of the actual cost of the services to the organization.

(3) *Retention of net earnings.* Exemption will not be denied a cooperative hospital service organization solely because the organization, instead of paying all net earnings to its patron-hospitals, retains an amount for such purposes as retiring indebtedness, expanding the services of the organization, or for any other necessary purpose and allocates such amounts to its patrons. However, such funds may not be accumulated beyond the reasonable needs of the organization. Whether there is an improper accumulation of funds depends upon the particular circumstances of each case. Moreover, where an organization retains net earnings for necessary purposes, the organization's records must show each patron's rights and interests in the funds retained.

(4) *Nonpatronage income.* An organization described in section 501(e) may have income from nonpatronage sources such as investment of retained earnings. However, such an organization cannot be exempt if it engages in any business other than that of providing the specified services, described in paragraph (c), for the specified patron-hospitals, described in paragraph (d). Thus, it cannot have unrelated business taxable income as defined in section 512 other than debt-financed income which is treated as unrelated business taxable income solely because of the applicability of section 514. Such an organization may also have certain interest, annuities, royalties, and rents which are excluded from unrelated business taxable income because of the modifications contained in sections 512(b) (1), (2) or (3). The nonpatronage income permitted under this subparagraph must be allocated or paid as provided in subparagraph (1) or retained as provided in subparagraph (3).

(5) *Stock ownership.* An organization does not meet the requirements of section 501(e) unless all of the organization's outstanding capital stock, if there is such stock, is held solely by its patron-hospitals. However, no amount may be paid as dividends on the capital stock of the organization. For purposes of the preceding sentence, the term "capital stock" includes common stock (whether voting or nonvoting), preferred stock, or any other form evidencing a proprietary interest in the organization.

(c) *Scope of services.* An organization meets the requirements of section 501(e) only if the organization performs, on a centralized basis, one or more of the following services and only such services: data processing, purchasing (including the purchasing and dispensing of drugs and pharmaceuticals to patron-hospitals), warehousing, billing and collection, food, clinical, industrial engineering (including the installation, maintenance and repair of biomedical and similar equipment), laboratory, printing, communications, record center, and personnel (including recruitment, selection, testing, training, education and placement of personnel) services. An organization is not described in section 501(e) if, in addition to or instead of one or more of these specified services, the organization performs any other service.

Example. An organization performs industrial engineering services on a cooperative basis solely for patron-hospital each of which is an organization described in section 501(c)(3) and exempt from taxation under section 501(a). However, in addition to this service, the organization operates laundry services for its patron-hospitals. This cooperative organization does not meet the requirements of this paragraph because it performs laundry services not specified in this paragraph.

(d) *Patron-hospitals*—(1) *Defined.* Section 501(e) only applies if the organization performs its services solely for two or more patron-hospitals each of which is—

(i) An organization described in section 501(c)(3) which is exempt from taxation under section 501(a),

(ii) A constituent part of an organization described in section 501(c)(3) which is exempt from taxation under section 501(a) and which, if organized and operated as a separate entity, would constitute an organization described in section 501(c)(3), or

(iii) Owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an

agency or instrumentality of any of the foregoing.

(2) *Business with nonvoting patron-hospitals.* Exemption will not be denied a cooperative hospital service organization solely because the organization (whether organized on a stock or membership basis) transacts business with patron-hospitals which do not have voting rights in the organization and therefore do not participate in the decisions affecting the operation of the organization. Where the organization has both patron-hospitals with voting rights and patron-hospitals without such rights, the organization must provide at least 50 percent of its services to patron-hospitals with voting rights in the organization. Thus, the percentage of services provided to nonvoting patrons may not exceed the percentage of such services provided to voting patrons. Notwithstanding that an organization may have both voting and nonvoting patron-hospitals, patronage refunds must nevertheless be allocated or paid to all patron-hospitals solely on the basis specified in paragraph (b) of this section.

(3) *Services to other organizations.* An organization does not meet the requirements of section 501(e) if, in addition to performing services for patron-hospitals (entities described in subdivisions (i), (ii) or (iii) of subparagraph (1)), the organization performs any service for any other organization. For example, a cooperative hospital service organization is not exempt if it performs services for convalescent homes for children or the aged, vocational training facilities for the handicapped, educational institutions which do not provide hospital care in their facilities, and proprietary hospitals. However, the provision of the specified services between or among cooperative hospital service organizations meeting the requirements of section 501(e) is permissible.

(e) *Effective dates.* An organization, other than an organization performing clinical services, may meet the requirements of section 501(e) and be a tax exempt organization for taxable years ending after June 28, 1968. An organization performing clinical services may meet the requirements of section 501(e) and be a tax exempt organization for taxable years ending after December 31, 1976.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-741 Filed 1-10-84; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 230

[ER 200-2-2]

Environmental Quality, Procedures for Implementing the National Environmental Policy Act (NEPA)

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Proposed rule.

SUMMARY: This proposed rule is designed to replace the regulations issued by the U.S. Army Corps of Engineers on August 25, 1980, and revised on March 2, 1981, implementing the procedural provisions of NEPA as required by the Council on Environmental Quality's (CEQ) regulations (40 CFR Parts 1500–1508). The purpose of this proposed rule is to clarify and streamline NEPA requirements on activities for Federal water resource projects and related lands. In addition, the Corps NEPA regulations governing the Department of the Army's regulatory activities have been modified to be consistent with the recommendations of the Presidential Task Force on Regulatory Relief and the policies of the Assistant Secretary of the Army (Civil Works). Procedures contained in the CEQ regulations have been incorporated to reduce paperwork and delay in preparing, reviewing, processing and approving all types of Corps NEPA documents. Moreover, this proposed rule is intended to reduce unnecessary regulatory burdens on applicants seeking Department of the Army permits while maintaining the integrity of the Corps environmental review responsibilities under NEPA.

DATE: Comments must be received by the Corps of Engineers no later than March 12, 1984.

ADDRESS: Written comments should be sent to: Chief of Engineers, Department of the Army, ATTN: (DAEN-CWR-P), Washington, DC., 20314. Phone: (202/272-0120).

FOR FURTHER INFROMATION CONTACT: Mr. Richard Makinen, (202) 272-0120 or Dr. John Hall, (202) 272-0199.

SUPPLEMENTARY INFORMATION:

Classification

The Secretary of the Army has determined that this revision is not a "major" rule within the meaning of Executive Order 12291. This is because the revision will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies; or (3) have significant adverse effects on competition, employment, investment productivity, innovation or on the ability of a United States based enterprise to compete with foreign-based enterprises in domestic or export markets.

The purpose and intended effect of this revision is to streamline Corps NEPA procedures consistent with improved management techniques and to reduce unnecessary regulatory burdens on applicants who seek Department of the Army permits. No increased paperwork burdens are imposed by the revision.

This revision was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

Regulatory Analysis

Under E.O. 12291, the Department of the Army must determine if a regulation is "major" and therefore subject to a Regulatory Impact Analysis. Because the Department of the Army believes that this revision is not "major," it is not subject to such an analysis.

Background

In November 1978, CEQ revised the NEPA regulations and directed that Federal agencies achieve the requirement of NEPA, but at the same time, reduce paperwork and delay (40 CFR 1500.4 and 1500.5). On June 29, 1979, the Corps of Engineers proposed revisions to its NEPA implementation regulations and published its final rules on August 25, 1980. Experience since that time indicates that the August 25, 1980, rules do not achieve the requirements of the CEQ regulations in that there remain many unnecessary delays and paperwork in the Corps NEPA process. These proposed rules are intended to reduce or eliminate the nonproductive and wasteful aspects of the existing regulations. The CEQ regulations also specify that agency implementing regulations should not repeat or paraphrase the CEQ regulations. There is extensive repetition in the current Corps regulations and this proposal would eliminate most of that. Some repetition was retained for clarity. However, it is our intent that, when adopted, these regulations would supplement the CEQ regulations and Corps officials would use both the CEQ and these regulations as integral parts of the overall rules governing NEPA compliance.

The changes proposed here are to reduce or eliminate unnecessary paperwork and delay and to reduce the length of this document by eliminating duplication with the CEQ regulations. We solicit comments on other changes which may be made along those lines. There is no intent to change the decision making process nor reduce concerns for environmental quality. We specifically solicit comments on whether these proposed rules may be perceived to do so and, is so, how they may be modified to achieve the purposes stated above while retaining appropriate environmental sensitivity.

With respect to Appendix B, which relates to the Corps of Engineers regulatory program we propose to make the changes noted, but, following public review, the appendix will be relocated to 33 CFR Part 325, Appendix B, to consolidate the rules governing the regulatory program all in the same part of the CFR.

Paragraph-by-paragraph analysis of the proposal

230.1 Purpose. No substantive change. This section would be shortened to eliminate unnecessary verbiage.

230.2 Applicability. No change.

230.3 References. Minor changes to update references.

230.4 Definitions. This section would be changed to refer to CEQ and other Corps regulations, rather than repeat definitions.

230.5 Policy. This section would be deleted. CEQ regulations contain the Federal policy (40 CFR 1500.2) and require that agency implementing regulations be confined to procedures only (40 CFR 1507.3). A new section 230.5 would be added, titled "Responsible Officials," to identify within the agency which officials are responsible for the various NEPA compliance requirements. With a few exceptions related to national policy and coordination at the headquarters level, Corps district commanders are responsible for NEPA compliance.

230.6 Actions Normally Requiring an EIS. This section would be significantly revised. The existing regulation lists activities by legislative authority rather than by degree of environmental impact. The proposed regulations would focus on the degree of impacts. However, the range of projects and wide variation in their impacts preclude a detailed discussion of which types of projects may or may not require an EIS. We have attempted to give broad categories only as guidance to district commanders who in turn must make judgments on a case-by-case basis.

230.7 Actions Normally Requiring an EA. The same approach would be used here as in 230.6 above. We have listed broad categories of impacts rather than legislative authorities. District commanders would be responsible for case-by-case determinations. The guidance provided herein is guidance only and district commanders have the authority and responsibility for making the judgmental determination in the field.

230.8 Emergency Actions. This section would be rewritten to clarify that emergency actions do not excuse district commanders from considering the environmental effects of their actions. However, the intent is to take whatever emergency action is required with the consideration to environmental effects without observing the formal procedures required by this regulation. Because the nature and extent of emergency actions cannot be predicted, the regulations include a provision for NEPA documentation in major cases to be made after-the-fact. Procedures have not been established purposely because of the unpredictable nature of such occurrences and any such regulations would be speculative in their adaptability to given sets of circumstances. We intend that when such circumstances arise, Corps officials will determine appropriate measures through consultation with CEQ, EPA, and other affected interests.

230.9 Categorical Exclusions. The present § 230.9, Environmental Assessment, and subsequent sections through § 230.12 would be renumbered by one number higher. A new § 230.9 would be added to incorporate the categorical exclusions which are currently listed in Appendix D and to add several categorical exclusions which deal with routine operation and maintenance activities as well as minor situations where another agency would be the "lead" agency under CEQ regulations and that agency has determined that the activity is categorically excluded. The new categorical exclusions are listed at §§ 230.9(a) through 230.9(d). In addition, the introductory sentences of the paragraph would be modified to delete unnecessary verbiage. Interested parties are requested to comment on these proposed reclassifications. Specific examples that support the commentator's position should be provided.

230.10 Environmental Assessments. This section would be revised to eliminate unnecessary language and to delete the reference incorporating § 230.25 which would use a more efficient approach to displaying compliance with other environmental statutes.

230.11 Finding of No Significant Impact (FONSI). This section would be renumbered from § 230.10, and would be modified to eliminate unnecessary language, to reduce unnecessary circulation of documents and to delete the requirement for comment-response format of addressing issues raised. These changes are intended to clarify that the FONSI is the decision document of the responsible official and as such, is not subject to review and comment through the coordination process. The appropriate NEPA document for comment and evaluation of impacts is the environmental assessment.

230.12 Environmental Impact Statement (EIS). This section would be renumbered from § 230.11 and would be modified to eliminate unnecessary language, to delete the duplicative discussion of format and other requirements which are contained in the CEQ regulations, to eliminate documentation which is not required by CEQ and to reduce duplicative or overlapping procedures and documents by referring to ER 1105-2-60, Planning Guidance Notebook, and to the proposed Appendix B of 33 CFR Part 325 (for regulatory actions). The reference to Appendix A would be deleted because Appendix A itself would be deleted since the material is considered as agency informational guidance and not agency procedures. The provision for supplemental information reports would be modified to make it a discretionary act of the responsible official. It is not required by NEPA or the CEQ regulations and, hence, would not be required by Corps of Engineers regulations. However, district commanders are expected to keep the public informed as appropriate to ensure proper public input to the process.

230.13 Record of Decision. This section would be modified significantly to eliminate duplication with CEQ regulations and to clarify the level of signature authority within the agency. The present § 230.13, Monitoring and Mitigation would be deleted because these subjects are appropriately discussed in 33 CFR Part 1505. We interpret monitoring as that necessary to insure adopted mitigation measures are implemented.

230.14 Lead and Cooperating Agencies. This section would be significantly reduced to eliminate duplication with CEQ regulations and to state those situations where the Corps may be the lead agency or a cooperating agency. We believe generally that "when everyone is responsible, no one

is responsible" and accordingly, discourage the joint lead agency concept. However, if a district commander determines that a joint lead agency arrangement would best serve project goals and public input, such arrangements may be made.

230.15 Scoping. This section which now essentially repeats or paraphrases CEQ regulations would simply incorporate by reference the CEQ provisions for scoping.

230.16 Notice of Intent. This section would be modified to incorporate by reference the procedures in ER 200-2-1 for publications in the Federal Register and to eliminate the specific requirement to furnish a notice of intent to certain EPA officials. Notification to those officials is required by CEQ regulations and need not be repeated in Corps regulations.

230.17 Filing Requirements. This section would be modified to delete unnecessary provisions and to clarify responsibilities within the agency for filing documents. Timing requirements would be modified to require that if EIS's are integrated into planning documents, they be completed within the scope of the critical path of project or study completion. If they are not integrated into planning documents, they should be completed within one year, if practicable. "Worst case" analyses would be used as provided by CEQ regulations. Specific comment periods and expedited filing are provided in CEQ regulations and would not be repeated in this section. The timing requirements for departmental review actions would be deleted from this regulation because the EIS process is completed by that time and departmental reviews are covered by other Corps regulations (ER 1105-2-60).

230.18 Availability. This section would be shortened by elimination of repetition with CEQ regulations and modified to require that if an EIS exceeds 50 pages, a summary will be prepared as provided in 40 CFR 1502.19 and 1506.6. The purpose of this is to provide a document in which the public can find all pertinent information quickly and to reduce the volume of paper which is circulated for review. Of course, the full document and appendices are always available and will be provided whenever appropriate.

230.19 Comments. This section would be shortened by eliminating duplication with CEQ regulations and would be modified by providing flexibility for the district commander to use the most efficient and effective means to display the comments and the Corps consideration thereof in the final EIS. The intent of this modification is to provide for a proper balancing of considerations of clarity, brevity, legal sufficiency, and administrative efforts. The public at large normally requires clear, concise analysis whereas individual commentators prefer to see their comments specifically addressed. The subparagraph dealing with comments on the final EIS has been simplified because we have found that very few such comments are received and even then normally do not raise new issues. Hence, we would make specific responses discretionary based on the substance of the comments.

230.20 Integration with State and Local Procedures. This section would adopt without modification the procedures specified in CEQ regulations.

230.21 Adoption of EIS. This section would be shortened by eliminating duplication of CEQ regulations and to stress that redrafting and recirculation of other agency EIS will be done only if there is a significant need to do so. Minor disagreements with the content of an EIS would not be cause to redraft and recirculate an EIS.

230.22 Limitations on Actions During the NEPA process. This section would simply incorporate by reference the requirements of the CEQ regulations. The current provisions of this section are purely duplicative.

230.23 Predecision Referrals. Most provisions of the current regulations duplicate CEQ regulations and would be deleted. The proposed regulation would address internal agency procedures required to initiate a predecision referral in a timely fashion.

230.24 Agency Decision Points. This section would be shortened by eliminating duplicative or unnecessary provisions. The new section would simply reference where decision points are found in other parts of Corps regulations.

230.25 Environmental Review and Consultation Requirements. This section would be reduced significantly by eliminating lengthy discussions of various related statutes, executive orders and memoranda. Such discussion and analysis are incorporated by reference to the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation studies (P&G). This will insure consistency with the Principles and Guidelines and reduce the volume of federal regulations without altering their effect. Discussion of Executive Order 12114, Environmental Effects Abroad is retained because it does not appear elsewhere in Corps regulations.

230.26 General Considerations. This section would be shortened significantly because it is largely duplicative of CEQ regulations.

Appendix A. The current Appendix A would be deleted since the material contained therein is otherwise contained in Corps regulations, circulars, etc. Pertinent provisions would be incorporated into the basic regulation. The current Appendix C would be redesignated appendix A. This Appendix would be slightly changed to reflect revised internal planning procedures under the new Principles and Guidelines.

Appendix B. Par. 1. Introduction. Added emphasis would be given to reducing paperwork.

Par. 2. General. No change.

Par. 3. Development of Information and Data. This paragraph would be revised to eliminate duplication with CEQ regulations (40 CFR 1506.5 and 40 CFR 1502.22).

Par. 4. Elimination of Duplication with State and Local Procedures. No change.

Par. 5. Informing the Public. The subject of this paragraph would be changed to "Public Involvement." The text would be shortened to eliminate unnecessary verbiage.

—Pre-Application Consultation for Major Applications (paragraph 6) would be deleted. CEQ regulations (40 CFR 1501.2(d) and Corps regulations (33 CFR Part 325) adequately cover the need to commence the NEPA process at the earliest possible time to insure that environmental values are fully considered in the decision making process.

Par. 6 Categorical Exclusions. This paragraph and subsequent paragraphs would be renumberd by one number less. This paragraph would be modified to add several categories of permit activities, which based on the Corps experience, are not considered to be major Federal actions significantly affecting the human environment and would therefore be categorically excluded from NEPA documentation. We believe that categorical exclusions may be more effectively used and request interested parties to comment on these proposed categorical exclusions with particular attention given to size or volume thresholds, or other criteria used to categorize the significance of an activity.

—Specific examples that support the commentator's position are requested. The paragraph would also revise the procedures for a district commander to develop additional categorical exclusions appropriate to that district after public notice and review by other Federal, state, and local

agencies and the general public. The proposed additional categorical exclusions would require final approval by the division commander.

Par. 7 EA/FONSI Document. This paragraph would be modified to better define the scope of analysis for an EA for an activity requiring a Corps permit; essentially the same rule would govern other Corps NEPA documents (e.g. EIS). This proposed provision is intended to reflect the leading decisions of the federal courts concerning the scope of analysis for NEPA documents, and the policies of the administration concerning regulatory relief. The paragraph has also been modified to encourage districts to reduce unnecessary paperwork by combining decision documents with the EA.

—Finding of Fact (paragraph 9) would be deleted. The requirement for this document is discussed in 33 CFR Part 325.

Par. 8 Environmental Impact Statement. This paragraph and subsequent paragraphs would be renumbered by two numbers less. Paragraph would be shortened by eliminating duplication of CEQ regulations.

Par. 9 Organization and Content of Draft EIS. This pargraph would be revised by defining the range of alternatives which must be addressed in an EIS prepared in connection with an application for a Corps permit. Under paragraph 9b(5) (c) and (d) the district commander would need only to consider alternatives which are reasonably related to the general purpose and need to be served by the specific activity requiring a Corps permit. Also, alternatives outside the permit applicant's capabilities would be considered reasonable and discussed in the EIS only when and to the extent necessary to objectively evaluate and reach a decision on the permit application.

Par. 10 Notice of Intent. No change.

Par. 11 Public Hearing. No change.

Par. 12 Organization and Content of Final EIS. This paragraph would be revised to eliminate unnecessary verbiage.

Par. 13 Comments Received on the Final EIS. This paragraph would be revised to eliminate unnecessary verbiage.

Par. 14 EIS Supplement. This paragraph would be shortened by referring to Corps basic (NEPA) regulation, rather than duplicate information.

—Supplemental Information and Other Reports (Paragraph 17) would be deleted because there is no legal or regulatory basis for them. However, district commanders are still expected to keep the public informed as appropriate to ensure proper public input to the process.

—Public Notice Announcing Availability of Draft, Final EIS and EIS Supplements (paragraph 18) would be deleted. Material contained in this paragraph duplicates existing Corps public notification requirements (33 CFR 325.3) and CEQ regulations (40 CFR 1506.6).

Par. 15 Filing Requirements. This paragraph would be renumbered by four numbers less. This paragraph would be shortened by eliminating unnecessary verbiage. It would incorporate by reference the CEQ regulations (40 CFR 1506.9).

Par. 16 Timing. This provision would be removed from the preceding paragraph to establish a separate subject. It would incorporate by reference the CEQ provisions on timing of agency actions (40 CFR 1506.10). The following paragraphs would be renumbered by three numbers less.

Par. 17 Expedited Filing. No change.

Par. 18 Record of Decision. This paragraph would be modified to require submittal of the signed Record of Decision to the Office of Federal Activities, EPA, stating that the date of the letter starts the 25-day referral period.

Par. 19 Predecision Referrals by Other Agencies for Regulatory Actions. This paragraph would be shortened to eliminate unnecesary verbiage.

Par. 20 Review of Other Agencies' EIS. No change.

Par. 21 Monitoring. This paragraph would be shortened by simply incorporating references to the CEQ regulations (40 CFR 1505.3) and 33 CFR Part 325.

List of Subjects in 35 CFR Part 230

Administrative practice and procedure, Environmental impact statements, Environmental protection, Flood control, Flood plains, Navigation, Water resources, Water supply, Waterways, Wetlands.

Dated: December 9, 1983.

Robert K. Dawson,

Deputy, Assistant Secretary of the Army (Civil Works).

It is proposed to revise 33 CFR Part 230 to read as follows:

PART 230—PROCEDURES FOR IMPLEMENTING NEPA

Sec.

Authority: National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.); Executive Order 1514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by Executive Order 11991, May 24, 1977; and CEQ Regulations Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

§ 230.1 Purpose.

This regulation provides guidance for implementing the procedural provisions of NEPA. It supplements Council on Environmental Quality (CEQ) regulation 40 CFR Parts 1500–1508, November 29, 1978 in accordance with 40 CFR 1507.3, and is intended to be used only in conjunction with the CEQ regulation. Whenever the guidance in this regulation is unclear or not specific the reader is referred to the CEQ regulation.

§ 230.2 Applicability.

This regulation is applicable to all HQUSACE/OCE elements and all field operating activities having responsibility for preparing and processing environmental documents in support of Civil Works functions.

§ 230.3 References.

(a) Executive Order 11514, Protection and Enhancement of Environmental Quality, 5 March 1970, as amended by

Executive Order 11991, 24 May 1977 (42 FR 26967, 25 May 1977).

(b) Executive Order 11593, Protection and Enchancement of the Cultural Environment, 13 May 1971 (36 FR 8921, 15 May 1971).

(c) Executive Order 11988, Floodplain Management, 24 May 1977 (42 FR 26951, 25 May 1977).

(d) Executive Order 11990, Protection of Wetlands, 24 May 1977 (42 FR 26961, 25 May 1977).

(e) Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, 4 January 1979 (44 FR 1957, 9 January 1979).

(f) Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

(g) Clean Water Act (formerly known as the Federal Water Pollution Control Act) 33 U.S.C.1344 (hereinafter referred to as Section 404).

(h) Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

(i) Deepwater Port Act of 1074, as amended, 33 U.S.C. 1501 *et seq.*

(j) Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

(k) Federal Water Project Recreation Act, 16 U.S.C. 460–1(12), *et seq*

(l) Fish and Wildlife Coordination Act, 16 U.S.C. *et seq.*

(m) Historic Sites Act 1935, as amended, 16 U.S.C. 461–467.

(n) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.*

(o) Marine Protection, Research and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1401 *et seq.*

(p) National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.* (hereinafter referred to as NEPA)

(q) National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*

(r) Preservation of Historic and Archeological Data Act of 1974, as amended, 16 U.S.C. 469 *et seq.* (Also referred to as the "Reservoir Salvage Act" of 1969, as amended").

(s) River and Harbor Act, March 3, 1899 (30 Stat. 1151, 33 U.S.C. 401 and 403) and (30 Stat. 1152, 33 U.S.C. 407).

(t) Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271 *et seq.*

(u) "Navigable Waters, Discharge of Dredged or Fill Material," (40 CFR 230), Environmental Protection Agency.

(v) "Regulations for Implementing the Procedural Provisions of the National Enviromimental Policy Act of 1969," (40 CFR Parts 1500–1508, 29 November 1978), Council on Environmental Quality.

(w) "Protection of Historic and Cultural Properties" (36 CFR Part 800, 30 January 1979), Advisory Council on Historic Preservation.

(x) Economic and Environmental Principles and Guidelines for Water and Related Land Resource Implementations Studies (48 CFR 10249–10258, 10 March 1983).

(y) Regulatory Programs of the Corps of Engineers 33 CFR Parts 320–330 (47 FR 31794–31834, 22 July 1982).

(z) "CEQ Memorandum of 11 August 1980, Analysis of Impacts on Prime or Unique Agricultural Lands in Implementing NEPA."

(aa) "CEQ Memorandum of 10 August 1980, Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory."

(bb) "CEQ Memorandum of 17 November 1980, Guidance on Applying Section 404(r) of the Clean Water Act to Federal Projects which Involve the discharge of Dredged or Fill Materials into Waters of the U.S., Including Wetlands."

(cc) ER 200–2–1.
(dd) ER 310–1–5.
(ee) ER 1105–2–10.
(ff) ER 1105–2–20.
(gg) ER 1105–2–30.
(hh) ER 1105–2–50.
(ii) ER 1105–2–60.
(jj) ER 1105–2–811.
(kk) ER 1130–2–400.
(ll) ER 1103–2–406.
(mm) ER 1130–2–412.
(nn) ER 1130–2–413.
(oo) ER 1165–2–228.
(pp) ER 1165–2–400.
(qq) EP 360–1–10.
(rr) EP 1105–2–15.
(ss) EP 1105–2–55.
(tt) EP 1165–2–501.

§ 230.4 Definitions.

(Refer to applicable Corps of Engineers Regulations and 40 CFR Part 1508).

§ 230.5 Responsible officials.

The district commander is the Corps NEPA official responsible for compliance with NEPA for actions within district boundaries. The district commander may also be the responsible Corps official to provide agency views on other agencies' EIS. The Office of Environmental Policy Development CDR USACE (DAEN-CWR-P) WASH DC 20314 (phone number 202–272–0120) is the point of contact for information on Corps NEPA documents. CDR USACE (DAEN–CWZ–P) WASH DC 20314 (phone number 202–272–0103) is the point of contact for NEPA oversight activities and the review of other agencies EIS and related NEPA documents.

§ 230.6 Actions normally requiring an EIS.

The following actions normally are major Federal actions having a significant impact on the quality of the human environment, and therefore normally require an EIS. However, district commanders may consider the use of an EA on these types of actions if early studies show that the action is not likely to have a significant impact on the quality of the human environment and is not likely to result in legal aciton due to substantial controversy.

(a) Feasibility reports for authorization and construction of major projects which affect a significant geographic area.

(b) Proposed changes in projects previously discussed in an environmental document when those changes would result in significant environmental impacts beyond those previously discussed. The change may occur prior to or after initiation of construction.

(c) Proposed major changes in the operation and/or maintenance of a completed project which would result in significant environemental impact.

(d) Permit actions which would result in significant environmental impacts.

§ 230.7 Actions normally requiring an Environmental Assessment (EA) but not necessarily an EIS.

The following actions normally are not major Federal actions having a significant impact on the quality of the human environment, and therefore, normally do not require an EIS. If the district commander determines that this test cannot be met, either prior to or during the preparation of an EA, the district commander should prepare an EIS for Federal actions listed below. In addition, if the condition for an EA is met, but the district commander believes that the Federal action may result in legal action due to substantial controversy, he may prepare an EIS to better assure the likelihood of proceeding with the proposed Federal action without subsequent delays.

(a) *Feasibility Reports.* Feasibility reports which recommend Federal actions which are limited in scope and geographic area, and are not likely to have significant environmental impacts.

(b) *Authorized Projects.* Changes to authorized projects which do not result in significant impacts different from those previously addressed in an EIS or EA on the project, and which may be approved under the discretionary authority of the Chief of Engineers.

(c) *Continuing Authorities Program.* Projects recommended for approval of the Chief of Engineers under the following authorities.

(1) Section 205 Small Flood Control Authority

(2) Section 208 Snagging and Clearing for Flood Control Authority
(3) Section 107 Small Navigation Project Authority
(4) Section 103 Small Beach Erosion Control Project Authority
(5) Section 111 Mitigation of Shore Damages Attributable to Navigation Projects

(d) *Construction and Operations and Maintenance.* Changes to projects in a construction or operations and maintenance category which would not cause significant environmental impacts where those activities were not considered in the project EIS or EA.

§ 230.8 Emergency actions.

District commanders are authorized to waiver environmental documentation requirements when responding to emergency situations to prevent or reduce imminent risk to life, health or property or severe economic losses. Emergency actions considered major in scope may require alternative NEPA arrangements. District commanders should contact the division commander for guidance. Division commanders, in turn, may contact DAEN–CWZ–P for guidance.

§ 230.9 Categorial exclusions.

The following actions when considered individually and cumulatively do not have a significant effect on the quality of the human environment and are excluded categorically from environmental documentation. However, district commanders should be alert for extraordinary circumstances which may dictate the need to prepare an EA or an EIS. Note: Even though an EA or EIS is not legally mandated for any Federal action falling within one of the following "categorical exclusions", that fact does not exempt any Federal action from procedural or substantive compliance with any other Federal law. For example, compliance with the Endangered Species Act, the Clean Water Act, etc., is always mandatory, even for actions not requiring an EA or EIS.

(a) Routine operation and maintenance actions of limited scope on completed Corps projects which carry out the authorized project purposes such as general administration, equipment purchases, custodial actions, general plans, erosion control, painting, repair rehabilitation, and replacement of existing structures and facilities such as buildings, roads, levees, groins and utilities.

(b) Maintenance dredging of small navigation projects and boat facilities using existing disposal sites or involving less than 50,000 cubic yards of uncontaminated dredged material to be placed in an upland site.

(c) Facilities at Corps projects, such as hydropower facilities, which are subject to other Federal agency authority and are categorically excluded by that agency.

(d) Planning and technical studies which do not contain recommendations for authorization or funding for construction, but may recommend further study. This does not exclude consideration of environmental matters in the studies.

(e) Grants to accomplish the highest and best use or authorized project purposes for:
(1) Agricultural and grazing purposes.
(2) Public park and recreational purposes.
(3) Commercial concession purposes.
(4) Private recreational purposes.
(5) Miscellaneous purposes of a minor nature such as lakeshore protection and improvements, steps, lights, etc.
(6) Use and occupancy of existing buildings, facilities, and real property.
(7) Fish and wildlife and forestry management purposes.
(8) Civil defense.
(9) Education.

(f) Real estate grants for use of excess or surplus real property.

(g) Real estate grants for Government-owned housing.

(h) Exchanges of excess real property and interests therein for property required for project purposes.

(i) Real estate grants for rights-of-way which involve only minor disturbances to earth, air, or water:
(1) Access roads or streets.
(2) Electric power, telephone, telegraph and other communication lines.
(3) Water, sewer, and irrigation pipelines, pumping plants and appurtenant facilities.
(4) Canals, ditches, dikes, retarding structures, etc. used in connection with fish and wildlife conservation and development programs.
(5) Removal of sand, gravel, rock, and other borrow material.
(6) Oil and gas seismic and gravity meter survey and exploration purposes.

(j) Real estate grant of consents to use Government-owned easement areas.

(k) Real estate grants for archaeological and historical investigations.

(l) Renewal and minor amendment of existing real estate grants evidencing authority to use Government-owned real property.

(m) Reporting excess or surplus real property to the General Services Administration for disposal.

(n) Disposal of excess separable recreation lands acquired under Pub. L. 89–72 or release of deed restrictions to cure encroachments.

(o) Disposal of excess easement interest to the underlying fee owner.

(p) Disposal of existing buildings and improvements for off-site removal.

(q) Sale of existing cottage site areas.

(r) Return of Public Domain lands to the Department of the Interior.

(s) Grants of lands to other Federal agencies (NEPA compliance is the responsibility of the other Federal agency).

(t) Emergency projects constructed under Section 14 or Section 3 of the Continuing Authorities Program.

§230.10 Environmental Assessments (EA).

(a) *Purpose.* An EA is a brief document which provides sufficient information to the district commander on potential environmental effects of the proposed action and its alternatives, for determining whether to prepare an EIS or a FONSI (40 CFR 1508.9). The district commander is responsible for making this determination.

(b) *Format.* While no special format is required, the EA should include a brief discussion of the need for the proposed action, its environmental impacts, alternatives to the proposed action and a list of the agencies, interested groups and the public consulted. The document, supported by necessary appendices or technical data to be retained by the district, is to be concise for meaningful review and decision. It should not normally exceed 15 pages. In the case of feasibility and continuing authority studies not requiring an EIS, the EA may be integrated into the report.

§ 230.11 Finding of No Significant Impact (FONSI).

A FONSI shall be prepared to accompany an EA when an EIS is not required. The FONSI shall briefly present the reasons why the action will not have a significant impact on the quality of the human environment, state that an EIS is not required and will be made available to the public in accordance with 40 CFR 1501.4(e)(1). In the case of feasibility and continuing authority studies, the FONSI together with the EA will be included within the report and circulated for review and comment. A notice of availability of the FONSI and report will be sent to all other parties on the mailing list at this time (40 CFR 1501.4(e)(2)). If the district commander determines after review of the comments received that an EIS should be prepared, the guidance outlined in Appendix A and ER 1105–2–

60 shall be followed. For regulatory actions refer to Appendix B for guidance.

§ 230.12 Environmental Impact Statements (EIS).

An EIS may be prepared as a separate document for regulatory permits or, in the case of Corps studies and projects, may be prepared as a section of the project report, or may be combined with (i.e., completely integrated with) the project report as authorized by 40 CFR 1500.4 and 1506.4. An integrated report/EIS shall meet the requirements of 40 CFR 1502.10. Specific guidance on integrated EIS's is contained in Er 1105–2–60. An EIS when prepared as a separate document shall follow the format outlined in 40 CFR 1502.10. District commanders should strive to limit the text covering paragraphs (d) through (g) of 40 CFR 1502.10 to less than 50 pages to the extent practicable and consistent with ensuring a legally and technically adequate EIS. In unusual or complex EIS's where the text may exceed 50 pages, the district commander will circulate the summary rather than the EIS as discussed in 40 CFR 1502.19. Technical data and background information in support of the necessary environmental analysis fundamental to the EIS should be referred to or included as an appendix to the document.

(a) *Draft and final EIS.* Detailed guidance on EIS's prepared for feasibility, re-evaluation and continuing authority studies is contained in ER 1105–2–60 (Planning Guidance Notebook). Appendix B contains guidance for regulatory actions. For other than feasibility, reevaluation and continuing authority studies, a final EIS may take the form of an "abbreviated" document described in 40 CFR 1503.4(c) if the changes from the draft EIS are minor and consist of factual corrections and/or are confined to explanation of Corps actions, citing authorities or reasons which support the agency position. An abbreviated final EIS will consist of a new title page, summary, errata or correction sheet(s) and comments and responses. In filing the abbreviated final EIS with EPA (Washington Office), five copies of the draft EIS shall be included in the transmittal. If the comments on the draft EIS raise significant issues, present new, reasonable and feasible alternatives, or other important matters not addressed in the draft EIS, a final EIS following the format in 40 CFR 1502.10 shall be utilized. District commanders shall be responsible for determining the type of final EIS to prepare. Processing of the EIS will be in accordance with the instructions contained in Appendices A and B.

(b) *Supplements.* A supplement to the draft or final EIS will be prepared whenever required as discussed in 40 CFR 1502.9(c). A supplement to a draft EIS will be prepared and filed in the same manner as a draft EIS and will be titled "Supplement I, Supplement II, etc. The final EIS will address the changes noted in the supplement. A supplement to a final EIS will be prepared and filed first as a *draft* supplement and then as a final supplement. Supplements will be filed and circulated in the same manner as a draft and final EIS (including the abbreviated procedure discussed in 12a. above). Supplements to a draft or final EIS filed before 30 July 1979 may follow the format of the previously filed EIS. Supplements to a draft EIS filed after this date will follow the format outlined in 40 CFR 1502.10, ER 1105–2–60, Appendix B, as appropriate. References to the draft or final EIS being supplemented should be used to eliminate repetitive discussions in order to focus on the important issues and impacts. The transmittal letter to EPA as well as the cover sheet shall clearly identify the title and purpose of the document as well as the title and filing date of the previous EIS being supplemented and how copies can be obtained. The decision will be made on the proposed action by the appropriate Corps official after the final supplement has been on file for 30 days, and a Record of Decision will be prepared and signed.

(c) *Tiering.* Tiering is discussed in 40 CFR 1502.20 and 1508.28 and should be used in appropriate cases. The initial broad or programmatic EIS must present sufficient information regarding the overall impacts of the proposed action so that the decision-makers can make a reasoned judgment on the merits of the action at the present stage of planning or development and exclude from consideration issues already decided or not ready for decision. The initial broad EIS should also identify data gaps and discuss future plans to supplement the data and prepare and circulate site specific EIS or EA as appropriate.

(d) *Other Reports.* District commanders may also publish periodic fact sheets and other informational documents on long-term or complex EIS to keep the public informed on the status of the proposed action. These documents will not be filed with EPA.

§ 230.13 Record of decision.

The Record of Decision shall follow the guidance outlined in 40 CFR 1505.2. In the case of regulatory permit actions, see Appendix B. Records of Decision will be signed as follows:

(a) *Feasibility Reports.* The Record of Decision for feasibility reports will be signed by the ASA(CW) at the time the eport is transmitted to Congress for authorization.

(b) *Continuing Authority Reports.* The Record of Decision will be signed by the Director of Civil Works or Chief, Planning Division (DAEN–CWP) at the time the project is approved for construction.

(c) *Projects in Preconstruction Planning and Engineering, Construction, Operations and Maintenance and Real Estate Actions.* The record of Decision will be signed by the Director of Civil Works for projects or actions requiring OCE approval. For projects or actions delegated to the division commander for approval, the division commander will sign the Record of Decision. In those cases involving the disposal of dredged or fill material into waters of the U.S. or where compliance with the requirements of other related laws and authorities was not attained with the review and circulation of the EIS, the signing of the Record of Decision may be deferred until after completion of the public interest review but prior to initiation of the proposed action.

(d) *Preparation and Processing.* The district commander preparing the EIS will be responsible for preparing the draft Record of Decision for signature of the ASA(CW); Director of Civil Works; Chief, Planning Division; or division commander; as appropriate. Incoming letters of comments and Corps responses received on the final EIS, as discussed in 230.19(d), will be available for review by the decision-maker signing the Record of Decision.

§ 230.14 Lead and cooperating agencies.

Lead agency, joint lead agency, and cooperating agency designation and responsibilities are contained in 40 CFR 1501.5 and 1501.6. The district commander is authorized to enter into agreements with regional offices of other agencies as required by 40 CFR 1501.5(c). District or division commanders will consult with HQDA (DAEN–CWZ–P), WASH DC 20314 prior to requesting resolution by CEQ as outlined by 40 CFR 1501.5 (e) and (f).

(a) *Lead Agency.* The Corps will normally be lead agency for Corps civil works projects and will normally avoid joint lead agency arrangements. Regulatory actions will be determined on the basis of 40 CFR 1501.5(c).

(b) *Corps as a Cooperating Agency.* For cooperating agency designation the Corps area of expertise or jurisdiction

by law is flood control, navigation, hydropower and regulatory functions. See Appendix II of CEQ regulations.

§ 230.15 Scoping.

Refer to 40 CFR 1501.7 for a complete discussion on scoping requirements.

§ 230.16 Notice of Intent.

A notice of intent to prepare a draft EIS for publication in the Federal Register is discussed in ER 200-2-1.

§ 230.17 Filing Requirements.

Five (5) copies of draft, final and supplemental EIS's shall be sent to: Director, Office of Federal Activities (A-104), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. District commanders shall file draft EIS, Supplements to a draft EIS, and draft supplements directly with EPA. Final EIS and final supplements shall be filed by appropriate elements within OCE for feasibility and reevaluation reports requiring Congressional authorization. Division commanders shall file final EIS and final supplements for all other Corps actions except for final EIS or final supplements for permit actions which will be filed by the district commander after appropriate reviews by division and the incorporation in the EIS of division's comments. OCE and/or division will notify field office counterparts when to circulate the final EIS or final supplement and will not file the final document with EPA until notified by the district commander that distribution of the document has been completed.

(a) *Timing Requirements.* Specific timing requirements regarding the filing of EIS's with EPA are discussed in 40 CFR 1506.10. District commanders will forward any expedited filing requests together with appropriate supporting information, through channels to DAEN-CWZ-P. Once a decision is reached to prepare an EIS or EIS Supplement, district commanders will establish a schedule of time limits for each step of the process, based upon considerations listed in 40 CFR 1501.8 and upon other management considerations. The time required from the decision to prepare an EIS to filing the final EIS should not normally exceed one year (CEQ 46 FR 18037, March 23, 1981). For feasibility, continuing authority or reevaluation studies, where the project study time is expected to exceed 12 months, the timing of the EIS should be commensurate with the project study time. In appropriate circumstance where the costs of completing studies or acquiring information for an EIS (i.e., cost in terms of money, time or other resources) would be exorbitant, the district commander should consider using the worst case analysis mechanism described in 40 CFR 1502.22 in order to complete the EIS process within a reasonable time-frame. In all cases, however, it is the district commander's responsibility to assure that the time limit established for the preparation of an EIS or EIS Supplement is consistent with the purposes of NEPA.

(b) *Timing Requirements on Supplements.* Draft and final supplements covering actions not having a bearing on the overall project for which a final EIS has been filed, will observe the minimum review periods for only those actions addressed in the supplement and not curtail other ongoing or scheduled actions on the overall project which have already complied with the procedural requirements of NEPA. In the case of an abbreviated final supplement, no administrative waiting periods are required.

§ 230.18 Availability.

Draft and final EIS and Supplements will be available to the public as provided in 40 CFR 1502.19 and 1506.6. Appendices will not normally be circulated but reader availability of single copies at no cost will be noted in the basic document.

§ 230.19 Comments. District commanders shall request the comments as set forth in 40 CFR Part 1503 and § 1506.6. A lack of response may be presumed to indicate that the party contacted has no comment to make.

(a) *Time Extensions.* District commanders will consider and act on requests for time extensions to review and comment on an EIS based on timeliness of distribution of the document, prior agency involvement in the proposed action, and the action's scope and complexity.

(b) *Public Meetings and Hearings.* See 40 CFR 1506.6(c)(2). Refer to paragraph 12, Appendix B for regulatory permit actions.

(c) *Comments Received on the Draft EIS.* See 40 CFR 1503.4. District commanders will pay particular attention to the display in the Final EIS of comments received on the Draft EIS. In the case of abbreviated Final EIS's, follow 40 CFR 1503.4(c). For all other Final EIS's, comments and agency responses thereto will be placed in an Appendix in a format most efficient for users of the final EIS to understand the nature of public input and the district commander's consideration thereof. District commanders will avoid lengthy or repetitive verbatim reporting of comments and will keep responses clear and concise.

(d) *Comments Received On the Final EIS.* Reponses to comments received on the final EIS are required only when substantive issues are raised which have not been addressed in the EIS. In the case of feasibility reports where the final report and EIS, BERH or MRC report, and the proposed Chief's report are circulated for review, incoming comment letters will be answered, if appropriate, by DAEN-CWP. After the review period is over, DAEN-CWP will provide copies of all incoming comments received in OCE to the district commander for use in preparing the draft Record of Decision. For all other Corps actions except permit actions, two (2) copies of all incoming comment letters (even if the letters do not require an agency response) together with the district commander's response (if appropriate) and the draft Record of Decision will be submitted through channels to the appropriate decision authority. In the case of a letter recommending a referral under 40 CFR 1504, reporting officers will notify DAEN-CWZ-P and request further guidance. The Record of Decision will not be signed nor any action taken on the proposal until the referral case is resolved.

(e) *Commenting on Other Agencies EIS.* See 40 CFR 1503.2 and .3. District commanders will provide comments directly to the requesting agency (if appropriate) with a copy provided to DAEN-CWP-P. DAEN-CWP-P may designate a lead office to provide coordinated agency comments. When the Corps is a cooperating agency, the Corps will always provide comments on another Federal agency draft EIS even if the response is no comment. Comments should be specified; restricted to jurisdiction by law and special expertise as defined in 40 CFR 1508.15 and .26. See Appendix II of CEQ regulations.

§ 230.20 Integration with State and Local Procedures.

See 40 CFR 1506.2.

§ 230.21 Adoption.

See 40 CFR 1506.3. A district commander will normally adopt another agencies EIS and consider it to be adequate unless he finds substantial doubt as to technical or procedural adequacy or obvious omission of factors important to a Corps decision. In such cases, he will prepare a draft and Final supplement noting in the draft supplement why the EIS was considered inadequate. In all cases, except where the document is not recirculated as

provided in 40 CFR 1506.3(b) or (c), the adopted EIS with the supplement, if any, will be processed in accordance with this regulation. A district commander may also adopt another agencies EA/FONSI.

§ 230.22 Limitations on Actions During the NEPA Process.

See 40 CFR 1506.1.

§ 230.23 Predecision Referrals.

See 40 CFR Part 1504. If the district commander determines that a predecision referral is appropriate the case will be sent through division to reach DAEN–CWZ–P not later than 15 days after the final EIS was filed with EPA.

§ 230.24 Agency Decision Points.

The timing and processing of Corps NEPA documents in relation to major decision points are addressed in paragraphs 11 and 13 and Appendix A for studies and projects and Appendix B for regulatory permit actions.

§ 230.25 Environmental Review and Consultation Requirements.

(40 CFR 1502.25).

(a) For Federal projects, NEPA documents shall be prepared concurrently with and integrated with environmental impact analyses and related review laws and executive orders. A current listing is contained in paragraph 3.4.3 of Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies. Reviews and consultation requirements, analyses, and status of coordination associated with applicable laws, executive orders and memoranda will be summarized in the draft document and the results of the coordination will be summarized in the final document. Appendices with further details may be added as appropriate. Regulatory actions will follow Appendix B and 33 CFR Parts 320 through 330.

(b) *Executive Order 12114, Environmental Effects Abroad of Major Federal Actions. 4 January 1979.* For general policy guidance, see Federal Register of 12 April 1979, 32 CFR Part 197. Procedural requirements for Corps Civil Works studies and projects are discussed below. Procedural requirements for Corps regulatory actions are discussed in 33 CFR Parts 320–330.

(1) The district commander through the division commander responsible for the activity will notify DAEN–CWP–E, N, S or W as appropriate, of an impending action which may impact on another country and that environmental studies are necessary to determine the extent and significance of the impact. The district commander will inform DAEN–CWP whether entry into the country is necessary to study the base condition.

(2) DAEN–CWP will notify the State Department, Office of Environmental and health (OES/ENH) of the district commanders concern, and whether a need exists at this point to notify officially the foreign nation of our intent to study potential impacts. Depending on expected extent and severity of impacts, or if entry is deemed necessary, the matter will be referred to the appropriate foreign desk for action.

(3) As soon as it becomes evident that the impacts of the proposed actions are considered significant, DAEN–CWP will notify the State Department. The State Department will determine whether the foreign embassy needs to be notified, and will do so if deemed appropriate, requesting formal discussios on the matter. When the International Joint Commission (IJC) or the International Boundary and Water Commission, United States and Mexico (IBWC) is involved in a study, the State Department should be consulted to determine the foreign policy implications of any action and the proper course of action for formal consultations.

(4) Any press releases or report documents dealing with impact assessments in foreign nations should be made available to the appropriate foreign desk at the State Department for clearance and coordination with the foreign embassy prior to public dissemination.

§ 230.26 General considerations in preparing Corps EIS.

(a) *Interdisciplinary Preparation.* See (40 CFR 1502.6.).

(b) *Incorporation by Reference.* To the maximum extent possible, EIS shall incorporate material by reference wherever possible in accordance with 40 CFR 1502.21. Footnotes should be used rarely; only where their use greatly aids the reader's understanding of the point discussed. Citation in the EIS of material incorporated by reference should be made by indicating an author's last name and date of the reference in parentheses at the appropriate location in the EIS. The list of references will be placed at the end of the EIS. Only information sources actually cited in the text should appear in the refrence list. The reference list shall include the author's name and address and the date and title of the publication, personal communications and type of communication (e.g., letter, telephone, interview, etc.).

(c) *Incomplete or Unavailable Information.* Refer to 40 CFR 1502.22.

(d) *Methodology and Scientific Accuracy.* Refer to 40 CFR 1502.24.

(e) *Cost-Benefit Analysis.* Refer to 40 CFR 1502.23.

(f) *Contractual Relationships.* The use of outside professional services (contractors) for the preparation of the basic data for EA and EIS for Corps actions shall be in accordance with 40 CFR 1506.5 (b) and (c). The district commander shall assist the contractor in the preparation of the document and independently evaluate and be responsible for its scope, content and accuracy. The names of the person(s) responsible for this independent evaluation and contractor participants shall be included in the list of principal preparers. District commanders shall prepare and have contractors execute a disclosure statement specifying that they have no financial or other interest in the outcome of the project. See Appendix B for regulatory actions.

Appendix A—Processing Corps NEPA Documents

NEPA documents for Corps Civil Works activities will be processed in accordance with the instructions contained in this Appendix and applicable paragraphs in the regulation. NEPA documents for regulatory actions will be processed in accordance with guidance contained in Appendix B.

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Title

1. Feasibility Studies

a. *Preparation and Draft Review.* During the reconnaissance phase of study, the district commander shall undertake environmental studies, with emphasis on scoping, commensurate with engineering, economic and other technical studies to determine the probable environmental effects of alternatives and the appropriate NEPA document to accompany the feasibility report. This environmental assessment process should be continued in the feasibility phase, and if the need for an EIS develops the district commander will prepare a Notice of Intent as early in the feasibility phase as possible. Following the guidance in ER 1105–2–10 through 60, the district commander will prepare a draft feasibility report incorporating the draft EIS or EA and FONSI (as appropriate), and circulate it to agencies, organizations and members of the public known to have an interest in the study. Five copies of the draft EIS will be mailed to Director, Office of Federal Activities (A–104),

EPA, WASH DC 20460 for filing after distribution has been completed. After receipt and evaluation of comments received, the district commander will prepare the final report and EIS or EA and FONSI and submit it to the division commander for review.

b. *Division Review.* After review, the division commander will issue a public notice of report issuance and transmit the report to the Board of Engineers for Rivers and Harbors (BERH). On Mississippi River and Tributaries projects, the district commander submits the report to the Mississippi River Commission (MRC) and issues the public notice. For the purpose of this regulation, only the acronym BERH will be used since the review functions of MRC and BERH are similar. The notice will provide a 30-day period for comments to be submitted to BERH on the report and EIS. Although the EIS in the report is identified as a "final" at this stage of processing, it should be clear to all those requesting a copy that it is an "Interim Document under Agency Review—Subject to Revision" and will become the agency's final EIS when it is filed after BERH review.

c. *BERH Review.* BERH will review the EIS at the same time as it reviews the final feasibility report. The report and EIS should be compatible. If BERH review requires minor revisions to the plan as recommended by the division and district commanders, minor changes to the EIS reflecting plan revisions shall be noted in the BERH report. If BERH action results in major revisions to the recommended plan and revisions are varients of the plan or alternatives described in the draft EIS, an addendum to the final EIS will be prepared by BERH (with assistance from the district commander, as required). This addendum "package" will be identified as an "Addendum to the Final EIS—Environmental Consequences of the Modifications Recommended by the Board of Engineers for Rivers and Harbors—project name." The format shall include an abstract on the cover page, recommended changes to the division/district commander's proposed plan, rationale for the recommended changes, environmental consequences of the recommended changes and the name, expertise/discipline, experience, and role of the principal preparer(s) of the addendum. Letters received during BERH review which provide new pertinent information having a bearing on the modifications recommended by BERH will be attached to the addendum. If BERH recommends major revisions or a new alternative to the plan recommended by the division and district commanders and was not discussed in the EIS, a supplement to the draft EIS will be required.

d. *Departmental Reviews.* The report and final EIS, together with the proposed report of the Chief of Engineers and the BERH report, will be filed with EPA at about the same time as it is circulated for 90-day Departmental review to the concerned state(s) and Federal agencies at the Washington level. District commanders will circulate the proposed Chief's Report, BERH report, and the report and final EIS to parties on the project mailing list not contacted by OCE (groups and individuals known to have an interest in the study or who provided comments on the draft EIS) allowing the normal 30-day period of review. OCE will provide a standard letter for the district to use to transmit these documents which explains the current status of the report and EIS and directs all comments to be sent to CDR USACE (DAEN-CWP). Copies of the report appendices circulated with the draft need not be circulated with the report and final EIS. All letters of comment received on the report and final EIS together with OCE responses and the draft Record of Decision (to be provided by the district commander) will be included with other papers furnished at the time the final Chief's Report is transmitted to ASA(CW) for further review and processing.

e. *Executive Reviews.* After completion of review, the Chief of Engineers will sign his final report and transmit the report and accompanying documents to ASA(CW). After review ASA(CW) will transmit the report to OMB requesting its views in relation to the programs of the President. After OMB provides its views, ASA(CW) will sign the Record of Decision and transmit the report to Congress.

2. Continuing Authority Studies

a. *Preparation and Draft Review.* During the reconnaissance phase of study, the district commander shall undertake environmental studies commensurate with engineering, economic and other technical studies to determine the probable environmental effects of alternatives and the appropriate NEPA document to accompany the detailed project report (DPR). If the results of the reconnaissance phase warrants preparation of an EIS, the district commander will prepare a Notice of Intent early in the ensuing detailed project study. Following the guidance in ER 1105-2-10 through 60 the district commander will prepare the draft DPR incorporating the EA and FONSI or draft EIS (as appropriate), and circulate it to agencies, organizations and members of the public known to have an interest in the study. If an EIS is prepared for the DPR five copies of the draft EIS will be mailed to Director, Office of Federal Activities (A-104), EPA, WASH DC 20460 for filing after distribution has been completed.

b. *Agency Review.* After receipt and evaluation of comments received, the district commander will prepare the final DPR and EA/FONSI or final EIS and submit eight (8) copies to the division commander for review and approval. After review the division commander will file five (5) copies of the final DPR and EIS with the Washington office of EPA. The division commander will not file the final EIS until notified by the district commander that distribution has been completed.

c. *Final Review.* Letters of comment on the final DPR including the final EIS will be answered by the district commander on an individual basis if appropriate. Two (2) copies of all incoming letters and the district commander's reply together with five copies of the final DPR and EIS and a draft of the Record of Decision will be submitted through division to the appropriate element within DAEN-CWP. After review of the DPR and NEPA documents, the Director of Civil Works or Chief, Planning Division will approve the project and sign the Record of Decision if an EIS was prepared for the DPR.

d. *Projects Not Requiring a DPR.* If the Initial Appraisal Report or Reconnaissance Phase documentation is used as the basis to approve a project for construction, it shall include NEPA documentation and shall be processed in the same manner as a DPR. This paragraph is not applicable to Section 14 and Section 3 projects.

3. Projects in Preconstruction Planning and Engineering, Construction, and Completed Projects in an Operations and Maintenance Category

a. *General.* District commanders will make a determination whether to prepare an EIS if one was not previously filed or review the existing NEPA document(s) on file to determine if there are any new circumstances which have occurred since completion of the document or if there are any significant environmental impacts resulting from proposed changes to the project which may warrant the preparation of a draft and final EIS Supplement. No further NEPA documentation is required for projects that remain unchanged. If the proposed changes and resulting impacts are not significant an EA and FONSI may be used.

b. *Preparation and Draft Review.* As soon as practicable after the district commander makes a determination to prepare an EIS or EIS Supplement for the proposed project, a Notice of Intent (as discussed in paragraph 17) will be prepared and published in the Federal Register. The district commander will prepare the draft EIS or EIS supplement and circulate it to agencies, groups and individuals on the mailing list known to have an interest in the project for review and comment. Five (5) copies will be sent to Director, Office of Federal activities (A-104), EPA, 401 M St., SW., WASH DC 20460 for filing after distribution has been completed.

c. *Agency Review.* After receipt and evaluation of comments received, the district commander will prepare the final EIS or EIS Supplement. Eight (8) copies will be transmitted to the division commander for review. After review the division commander will file five (5) copies with the Washington office of EPA. A copy of the final EIS or EIS Supplement and transmittal letter to EPA will be provided to the appropriate counterpart office within OCE. The division commander will not file the final EIS until notified by the district commander that distribution has been completed.

d. *Final Review.* Letters of comment on the final EIS or EIS Supplement will be answered by the district commander on an individual basis as appropriate. Two (2) copies of the incoming letters and the district commander's reply together with two copies of the final EIS or EIS Supplement and a draft of the Record Decision will be submitted to the appropriate Corps office having approval authority. After review of the NEPA documents and comments and responses, the appropriate Corps official will sign the Record of Decision and approve the project.

4. Other Corps Projects

Draft and final EIS for other Civil Works projects or activities having significant environmental impacts which may be authorized by Congress without an EIS

having been previously filed and for certain real estate management and disposal actions which may require an EIS should be processed in accordance with paragraph 3 of this appendix except that DAEN-REM-I will be the appropriate counterpart office within OCE for real estate actions.

Appendix B—Environmental Operating Procedures and Documents for Regulatory actions

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1. *Introduction.* In keeping with Executive Order 12291 and the policy stated in the CEQ regulation implementing NEPA (40 CFR 1500.2), where interpretive problems arise in implementing this regulation, and consideration of all other factors do not give a clear indication of a reasonable interpretation, the interpretation (consistent with the spirit and intent of NEPA) which results in the least paperwork and delay will be used. Specific examples of ways to reduce paperwork in the NEPA process are found at 40 CFR 1500.4. Maximum advantage of these recommendations should be taken.

2. *General.* Where guidance in this appendix is not specific, the reader is referred to the basic regulation (ER 200-2-2). Where guidance is not specific in both this appendix and in the basic regulation, the reader is referred to 40 CFR Parts 1500-1503.

3. *Development of Information and Data.* (See 40 CFR 1506.5). The district commander may require the applicant to furnish appropriate information that the commander considers necessary to allow preparation of an EA or EIS. See also 40 CFR 1502.22 regarding incomplete or unavailable information.

4. *Elimination of Duplication with State and Local Procedures.* See paragraph 21 basic regulation.

5. *Public Involvement.* Several paragraphs of this appendix (paragraphs 7, 8, 11, 13, and 19) provide information regarding district commanders making available to the public certain environmental documents in accordance with 40 CFR 1506.6.

6. *Categorical Exclusions.*

a. *General.* The following activities are not considered to be major federal actions significantly affecting the human environment and are therefore categorically excluded from NEPA documentation.

(1) Fixed or floating small private piers, docks, boat hoists and boathouses, which would not interfer with commercial or recreational navigation;

(2) Utility line crossings which completely span the waterway, provided there is no interference with commercial or recreational navigation and no change in preconstruction bottom contours due to excavation and filling associated with the utility line crossings;

(3) Maintenance dredging of small navigation and drainage facilities where dredged material is disposed of at an upland site;

(4) Concrete structures and headwalls for intake and outfall pipes and associated discharge of material for backfill or bedding; where no filling occurs in a wetland;

(5) Boat launching ramps, with no more than 2 lanes in width and not constructed through a fringe of wetland vegetation;

(6) All applications which qualify as letters of permission (as described at 33 CFR 325.5(b)(2)).

Note.—Even though an EA or EIS is not legally mandated for any Federal action falling within one of the "categorial exclusions," that fact does not exempt any Federal action from procedural or substantive compliance with any other Federal law. For example, compliance with the Endangered Species Act, the Clean Water Act, etc., is always mandatory, even for actions not requiring an EA or EIS.

b. *Extraordinary Circumstances.* District commanders should be alert for extraordinary where normally excluded actions would have substantial environmental effects and thus require an EA or EIS.

c. Each district commander may develop additional categorical exclusions as defined in 40 CFR 1508.4 appropriate to that district. The district commander shall notify other Federal, state, and local agencies and the general public through separate public notice procedures with a minimum 30 day comment period; and, if deemed necessary, hold a public hearing. These proposed exclusions, along with substantive comments and responses, will be forwarded to the division commander for final approval. The division commander will provide a copy of the approved categorical exclusions to CDR, USACE (DAEN-CWO-N) WASH DC 20314. A public notice shall be issued at the conclusion of these procedures announcing the final categorical exclusion. Public notices on site specific applications falling within such categories shall state that the application is considered to be a categorical exclusion.

7. *EA/FONSI Document.* (See 40 CFR 1508.9 and 1508.13 for definitions).

a. *Environmental Assessment (EA) and Findings of No Significant Impact (FONSI).* The district commander shall complete an EA as soon as practicable after all relevant information is available (i.e., after the comment period for the public notice announcing receipt of the permit application has expired) and prior to preparation of the Statement of Finding (SOF). When the EA confirms that the impact of the applicant's proposal is not significant and there are no "unresolved conflicts concerning alternative uses of available resources . . ." (Section 102(2)(E) of NEPA), the EA need not include a discusson on alternatives. In all other cases where the district commander determines that there are unresolved conflicts concerning alternative uses of available resources, the EA shall include a discussion of the reasonable alternatives which are considered by the ultimate decision-maker. The alternatives considered to be available to the decision-maker are: issue the permit as requested, issue the permit with appropriate conditions, or deny the permit. "Appropriate conditions" may include project modifications within the scope of established permit conditioning policy (See 33 CFR 325.4). Denial is considered the "no action" alternative. The EA should not normally exceed 15 pages and shall conclude with a FONSI (See 40 CFR 1508.13) or a determination that an EIS is required. The district commander may delegate the signing of an EA/FONSI document.

b *Scope of Analysis.* In some situations, a permit applicant may propose to conduct a specific activity requiring a Corps permit (e.g., construction of a pier in a navigable water of the United States) which is merely one component of an entire project (e.g., construction of an oil refinery on an upland area) The district commander should confine the scope of the EA to only the direct and indirect environmental effects of the specific activity requiring a Corps permit unless he determines that the following criteria mandate that he expand the scope of analysis of the NEPA review to encompass the direct and indirect environmental effects of the entire project.

The district commander should discuss the direct and indirect environmental effects of all aspects of the entire project only when the specific activity or activities requiring the Corps permit constitute such an essential component of the entire project that realization of the entire project would be impossible without the Corps permit and the overall Federal involvement with the project is sufficient to justify a NEPA review of the entire project. For example, if a non-Federal

oil refinery, electric generating plant, or industrial facility is proposed to be built on an upland site and the only Corps permit requirement relates to an outfall pipe or a connecting pipeline, that pipe or pipeline permit, in and of itself, normally would not constitute sufficient overall Federal involvement with the project to justify expanding the scope of a Corps EA to cover the entire upland facility, even if the facility could not operate without the Corps permit. On the other hand, if an applicant were to seek a Corps permit for an outfall pipe or pipeline plus a pier and/or a Corps permit to discharge a substantial amount of dredged or fill material into U.S. waters, such a combination of project features requiring Corps permits might well constitute sufficient Federal involvement with the project to justify a NEPA review of the entire project, provided that at least one project feature requiring a Corps permit must be essential to realization of the entire project. The scope of review undertaken in a Corps EA necessarily must involve a degree of discretion exercised by the district commander allowing him to deal with varying factual circumstances. One specific application of the above stated rule arises when a non-Federal pipeline or electric utility line requires a Corps permit to cross a water of the United States. In that situation, only the "specific activity" (i.e., the crossing per se) should be analyzed in an EA to determine whether or not the crossing would result in a significant environmental impact. The "entire project" (i.e. the entire length of the pipeline or utility line) should not be analyzed in the EA, unless there is sufficient Federal control over or responsibility for the entire project to "federalize" it for purposes of NEPA, in the judgment of the district commander. Notwithstanding the foregoing rules, the district commander is authorized to expand the scope of analysis of any Corps EA whenever and to the extent he finds necessary, in his sole discretionary judgment, to protect an important Federal interest which falls within the ambit of NEPA. When the district commander has decided to prepare an EA addressing all direct and indirect environmental effects of an entire project, he may incorporate by reference and rely upon the environmental reviews of other Federal and state agencies to the maximum extent practicable.

(See 40 CFR 1500.4(j); 1502.21; 1508; 1508.9)

c. *Combining documents.* The district commander is encouraged to combine the decision document and EA. The consolidated document shall be called Environmental Assessment and Statement of Findings (EA/SOF) (see 40 CFR 1506.4). The document must include a FONSI.

8. *Environmental Impact Statement*—General.

a. *Determination of Lead and Cooperating Agencies.* When the district commander determines that an EIS is required, he will contact any other appropriate Federal agencies to determine their respective role(s), i.e., that of lead agency, joint lead agency, or cooperating agency.

b. *Corps as Lead Agency.* When the Corps is lead agency, it will be responsible for funding the entire EIS except for those portions which come under the jurisdiction of other Federal agencies. This in no way shall be construed as lessening the district commander's ability to request the applicant to furnish appropriate information as discussed in paragraph 3 of this appendix. Staff support from other Federal agencies beyond the immediate jurisdiction of those agencies may be cost reimbursed by the Corps under written agreement.

c. *Corps as Cooperative Agency.* If another agency is the lead agency as set forth by the CEQ regulations (40 CFR 1501.5 and 1501.6(a) and 1508.16), the district commander will coordinate with that agency as a cooperating agency under 40 CFR 1501.6(b) and 1503.5 to insure that agency's resulting EIS may be adopted by the Corps for purposes of exercising its permit authority. As a cooperating agency the Corps will be responsible to the lead agency for providing that environmental information which is directly related to the regulatory matter involved and which is required for the preparation of an EIS and any inherent funding involved. This in no way shall be construed as lessening the district commander's ability to request the applicant to furnish appropriate information as discussed in paragraph 3 of this appendix.

When the Corps is a cooperating agency because of a regulatory permit action, the district commander will, in accordance with 40 CFR 1501.6(b)(4), "make available staff support at the lead agency's request" to enhance the latter's interdisciplinary capability provided the request pertains to the Corps permit covered by the EIS. Beyond this, Corps staff support will generally be made available to the lead agency to the extent practicable within its own responsibility and available resources. Any assistance to a lead agency beyond this will normally be by written agreement with the lead agency providing for a cost reimbursable basis for Corps resources expended. If the district commander thinks a public hearing should be held and another agency is lead agency, the district commander may request that the lead agency hold a joint public hearing and provide reasons why the joint hearing will be helpful. The district commander should offer to take an active part in the hearing and ensure coverage of Corps concerns.

d. *Scope of Analysis.* See paragraph 7(b).

e. *Scoping Process.* Refer to 40 CFR 1501.7.

f. *Contracting.* See 40 CFR 1506.5.

(1) The district commander may prepare an EIS, or may obtain information needed to prepare an EIS, either with his own in-house staff or by choosing a contractor. In choosing a contractor who reports directly to the district commander, the procedures of 40 CFR 1506.5(e) will be followed.

(2) Information required for an EIS may also be furnished by the applicant or a consultant employed by the applicant. Where this approach is followed, the district commander will (i) advise the applicant and/or his consultant of the Corps' information requirements, and (ii) meet with the applicant and/or his consultant from time to time and provide him with the district commanders views regarding adequacy of the data that is being developed.

g. *Change in EIS Determination.* If subsequent to a published notice of intent to prepare an EIS, or distribution of a draft EIS, the distict commander determines that an EIS is no longer required, he shall notify in writing the Office, Chief of Engineers, the appropriate Corps division office, the appropriate EPA Regional Administrator, the Office of Environmental Review of the Environmental Protection, Washington, DC, and the public of his determination.

The EIS process may follow through to the completion of the final EIS stage even though denial of a permit is anticipated if the record is not sufficient to support denial without completion of the final EIS process; if, in the district commander's opinion, the public interest would be better served by completing the EIS process; of if the district commander believes the final decision on the permit will be made by higher authority (see j. below).

h. *Time Limits.* For regulatory actions, the district commander will follow Para. 18a. of the basic regulation unless unusual delays caused by applicant inaction require longer time frames for EIS preparation. At the outset of the EIS effort, timing milestones will be developed and made available to the applicant and the public.

i. *Definition of Corps Action.* For regulatory actions, the Corps action is issuance of a permit or issuance of a permit with conditions. For regulatory permits, denial of a permit application is considered "no action" on the part of the Corps.

j. *Permit Elevation.* If for any reason the application will be decided at a higher authority. The district commander should not limit the alternatives from which higher authority may choose. The district commander shall forward to higher authority his views on comments received on the final EIS or final supplement to the final EIS.

9. Organization and Content of Draft EIS's.

a. *General.* This section gives detailed information for preparing draft EIS. When the Corps is the lead agency, this draft EIS format and these procedures will be followed. When the Corps is one of the joint lead agencies, the joint lead agencies will mutually decide which agency's format and procedures will be followed.

b. *Format.*

(1) *Cover Sheet.*

(a) Ref. 40 CFR 1502.11

(b) The "person at the agency who can supply further information" (40 CFR 1502.11(c)) is the regulatory action officer handling that permit application.

(c) The cover sheet shall identify the EIS as a Corps permit action and state the authorities (Sections 9, 10, 404, 103, etc.) under which the Corps is exerting its jurisdiction.

(2) *Summary.* In addition to the requirements of 40 CFR 1502.12, this section shall identify the proposed action as a Corps permit action stating the authorities (Sections 9, 10, 404, 103, etc.) under which the Corps is exerting its jurisdiction; it shall also summarize the purpose and need for the proposed action and it shall briefly state the beneficial/adverse impacts of the proposed action.

(3) *Table of Contents.*

(4) *Purpose of and Need for the Proposal.* The purpose of and need for the proposed specifc activity which requires a Department of the Army permit shall be stated. In the event the activity is but one part of a more extensive project which does not require a Department of the Army permit, then the purpose and need of the entire project shall also be stated. The applicant should be encouraged to provide a specific statement on the purpose of and need for the proposed activity.

(5) *Alternatives.* See 40 CFR 1502.14. The alternatives available to the decision-maker as stated in paragraph 8.i. above, are issuance, issuance with conditions, or denial.

(a) The applicant's proposal will be thoroughly addressed.

(b) In analyzing the alternatives for issuing the permit with conditions, the decision-maker will be guided by the policy on conditioning of permits contained in 33 CFR Part 325.

(c) Only reasonable alternatives need be considered in detail, as specified at 40 CFR 1502.14. No alternative shall be considered reasonable unless it is reasonably related to the general purpose and need to be served by the specific activity requiring a Corps permit. In addition, alternatives which cannot reasonably be undertaken by the permit applicant shall be considered reasonable and discussed only when and to the extent necessary to allow complete and objective evaluation of the permit application, and a fully informed decision regarding the ultimate decision to grant or deny the permit.

(d) The EIS should discuss geographic alternatives, e.g., changes in locaction and other site specific variables, and functional alternatives, e.g., project substitutes and design modifications.

(e) 40 CFR 1502.23 states a cost-benefit analysis shall be incorporated into the EIS when such an analysis is "relevant to the choice among alternatives . . . being considered for the proposed action." For regulatory actions, cost-benefit ratios need not be prepared on proposed actions at they relate to the efficiency of the proposal or the efficiency of the enterprise in the private sector. However, baseline economic data and its interpretation may be appropriate to include in an EIS when the data shows a measurable impact on the public.

(f) Disclosure of Preferred Alternative. For regulatory actions, the preferred alternative is determined at the completion of the regulatory process, i.e., after the 30 day period following filing the final EIS. Hence, no preferred alternative can be stated in an EIS. This does not negate the requirement of 40 CFR 1505.2(b) to objectively state the "environmentally preferred alternative."

(g) Mitigation. Guidance on mitigation is given in 33 CFR Part 325.

(6) *Affected Environment.* Ref. 40 CFR 1502.15

(7) *Environmental Consequences.* Ref. 40 CFR 1502.16

(8) *List of Preparers.* Ref. 40 CFR 1502.17

(9) *Public Involvement.* This section shall list the dates and nature of all public notices, scoping meetings and public hearings and include a list of all parties notified.

(10) *Appendices.* (See 40 CFR 1502.18). Appendices will be used the maxiumu extent practicable to maximum the length of the main text of the EIS. Appendices will not normally be circulated with every copy of the EIS, but appropriate appendices should be routinely provided to parties with special interest and expertise in the particular subject.

(11) *Index.* The index of an EIS is to be designed to provide for easy reference to items discussed in the main text of the EIS. These items are to be listed in the index in alphabetical order and page(s) and paragraph number(s) given for each item. The index shall be placed at the very end of the EIS document.

10. *Notice of Intent.* The district commander shall follow the guidance in ER 200–2–1 in preparing a notice of intent to prepare a draft EIS for publication in the Federal Register. A notice of intent announcing a proposed draft EIS for regulatory permit actions shall identify the action as a regulatory action in the title of the notice as listed in the Table of Contents to the Federal Register.

11. *Public Hearing.* If a public hearing is to be held pursuant to 33 Part CFR 327, the actions analyzed by a draft EIS are to be considered at the public hearing, the district commander will make the draft EIS available to the public at last 15 days in advance of the hearing. If a hearing request is received from another agency having jurisdiction as provided in 40 CFR 1506.6(c)(2), the district commander shall initiate coordination for a joint hearing with that agency whenever appropriate. Unless the district commander concurs that such a hearing is required under 33 CFR Part 327 he will not independently conduct a hearing.

12. *Organization and Content of Final EIS.* The organization and content of the final EIS including the abbreviated final EIS procedures shall follow the guidance in paragraph 12a of the basic regulation.

13. *Comments Received on the Fianl EIS.* For permit cases to be decided at the district level, the district commander will consider the comments, but need not reply to those parties providing comments on the final EIS. The Record of Decision may not be signed and permit issuance may not occur until 30 days after the final EIS has been noticed in the Federal Register by EPA. For permit cases decided at higher authority, the district commander shall forward the final EIS comment letters together with appropriate responses to the substantive comments to higher authority along with the case. In the case of a letter recommending a referral under 40 CFR Part 1504, the district commander will follow the guidance in paragraph 19 of this appendix.

14. *EIS Supplement.* See paragraph 12(b) of the basic regulation.

15. *Filing Requirements.* See 40 CFR 1506.9. Five (5) copies of EIS's shall be sent to Director, Office of Federal Activities (A–104), Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. EPA will publish a notice of availability in the Federal Register each week (generally Friday) which will start the review period. At the same time they are mailed to EPA for filing, one copy of each draft and final EIS, and EIS supplements when appropriate, shall be forwarded to CDR USACE (DAEN–CWO–N) WASH DC 20314. The transmittal letter to OCE shall include the status of the permit application, a list of the objectives, the issues involved, whether the case is in litigation, and a preliminary determination whether the permit decision will be made at the district level.

16 *Timing.* 40 CFR 1506.10 describes the timing of an agency action when an EIS is involved.

17. *Expedited Filing.* 40 CFR 1506.10 provides information on allowable time reductions and time extensions associated with the EIS process. As necessary, the district commander will provide the necessary information and facts to CDR USACE (DAEN–CWZ–P) WASH DC 20314 (with copy to DAEN–CWO–N) for consultation with EPA for a reduction in the prescribed review periods.

18. *Record of Decision.* In those cases involving an EIS, the Statement of Findings will be called the Record of Decision and shall incorporate the requirements of 40 CFR 1505.2. The Record of Decision is not to be included when filing a final EIS and may not be signed until 30 days after the final EIS has been noticed in the Federal Register by EPA. To avoid duplication, the Record of Decision may reference the EIS. The signed Record of Decision shall be sent to the Office of Federal Activities, EPA (A–104) WASH DC 20460. The transmittal letter to EPA should state that the date of the letter starts the 25-day referral period.

19. *Predecision Referrals by Other Agencies for Regulatory Actions* (See 40 CFR Part 1504). If another Federal agency advises a potential referral to CEQ under 40 CFR Part 1504, and the final decision (made no sooner than 30 days following filing of the final EIS) is contrary to the position of the agency which has indicated an intent to refer the matter to CEQ, the decision-maker will notify the agency and CEQ of his proposed decision. The referring agency will then have 25 calendar days to refer the case under 40 CFR Part 1504 if it so chooses. If a referral is made, the decision-maker will transmit the referral to (DAEN–CWZ–P) and (DAEN–CWO–N) for further guidance.

20. *Review of Other Agencies' EIS.* If the district commander determines that another agency's draft EIS which involves a Corps permit action is inadequate with respect to the Corps' permit action, the district commander shall attempt to resolve the differences concerning the Corps permit action prior to the filing of the final EIS by the other agency. If the district commander finds that final EIS is inadequate with respect to the Corps permit action, the district commander shall adopt the other agency's final EIS or a portion thereof and prepare an appropriate NEPA document to address the Corps' involvement with the proposed action. See paragraph 22 of the basic regulation.

21. *Monitoring.* Monitoring compliance with permit requirements shall be carried out in accordance with 40 CFR 1505.3 and with 33 CFR Part 325.

[FR Doc. 84-701 Filed 1-10-84; 8:45 am]
BILLING CODE 3710-92-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans' Education; Vocational Rehabilitation Panel

AGENCY: Veterans Administration (VA).

ACTION: Proposed regulations.

SUMMARY: These proposed regulations provide for replacement of the Vocational Rehabilitation Board by the Vocational Rehabilitation Panel. The Panel's role is to provide consultation and technical assistance in evaluating and developing rehabilitation plans for seriously handicapped veterans and dependents. The decision-making responsibility which the Board formerly had is eliminated and reassigned to a counseling psychologist in the Vocational Rehabilitation and Counseling Division of VA's Department of Veterans Benefits. The proposal should streamline the decisions being made regarding eligible children in special restorative training.

DATES: Comments must be received on or before February 10, 1984. It is proposed to make these regulations effective the date of final approval.

ADDRESS: Send written comments to the Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until February 21, 1984. Anyone visiting Central Office in Washington, D.C., for the purpose of inspecting any such comments will be received by the VA Central Office Veterans Services Unit in room 132. Visitors to VA field stations will be informed that the records are available for inspection only in Central Office, and will be furnished the address and room number.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420 (202) 389-2092.

SUPPLEMENTARY INFORMATION: Sections 21.3300, 21.3301, 21.3303, 21.3304, 21.3306, 21.3307, 21.4105, 21.4232 and 21.4276 are all amended to provide that VA counseling psychologists will make decisions concerning special restorative training or specialized vocational training that were formerly made by Vocational Rehabilitation Boards. Vocational Rehabilitation Boards are being replaced by Vocational Rehabilitation Panels.

The Veterans Administration has determined that these proposed regulations contain no major rules as that term is defined by Executive Order 12291, Federal Regulation. The annual effect on the economy will be less than $100 million. They will not result in any major increases in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administor of Veterans' Affairs hereby certifies that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these proposed regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because these regulations affect the internal organization of the VA, and, to a lesser extent individual benefit recipients. The regulations will have no significant impact on small entities, i.e., small businesses, small, private and nonprofit organizations, and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by these proposed regulations is 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 29, 1983.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration proposes to amend 38 CFR Part 21 as set forth below:

1. In § 21.3300, the introductory text of paragraph (b) is revised as follows:

§ 21.3300 Special restorative training.

* * * * *

(b) *Special restorative training courses.* The counseling psychologist, after consulting with the Vocational Rehabilitation Panel, may prescribe for special restorative training purposes courses such as—

(38 U.S.C. 1740)

* * * * *

2. In § 21.3301, the introductory portion of paragraph (a) and paragraphs (b) through (d) are revised and paragraph (e) is added so that the added and revised material reads as follows:

§ 21.3301 Need.

(a) *Determination of need.* When special restorative training has been requested or is being considered for a handicapped child, a counseling psychologist will obtain all information necessary to determine the need for and feasibility of special restorative training. After the counseling psychologist completes this task, he or she will refer the case to the Vocational Rehabilitation Panel. The panel will consider whether—

(38 U.S.C. 1741(a)).

* * * * *

(b) *Report.* The Vocational Rehabilitation Panel will prepare a written report of its findings and recommendations as to the need for assistance and the types of assistance which should be provided. The report will be sent to the counseling psychologist.

(38 U.S.C. 1741(a))

(c) *Development and implementation.* Following consultation with the panel or receipt of the panel's report, or both, the counseling psychologist will determine the need and feasibility of special restorative training. If an affirmative finding is made, an individualized, written plan comparable to that developed in cases of extended evaluation under 38 U.S.C. chapter 31 will be prepared. The plan will be developed jointly with the eligible child and parent or guardian.

(38 U.S.C. 1741(a))

(d) *Notification of disallowance.* When a parent or guardian has requested special restorative training on behalf of an eligible child, and the counseling psychologist finds that this training is not needed or will not materially improve the child's condition, the Veterans Administration will inform the parent or guardian in writing of the finding. The Veterans Administration will also inform the parent or guardian of his or her appeal rights.

(e) *Reentrance after interruption.* The case of an eligible child shall be referred to the panel for consideration of whether the eligible child may be

permitted reentrance into special restorative training following interruption. The panel will recommend approval to the counseling psychologist if there is a reasonable expectation that the purpose of special restorative training will be accomplished. See § 21.3306.

(38 U.S.C. 1740)

3. In § 21.3303, paragraph (a) is revised as follows:

§ 21.3303 Extent of training.

(a) *Length of special restorative training.* Ordinarily, special restorative training may not exceed 12 months. When the counseling psychologist, after consulting with the Vocational Rehabilitation Panel, determines that more than 12 months of training is necessary, he or she will refer the program to the Director, Vocational Rehabilitation and Counseling Service for prior approval. Where the plan for a program of special restorative training itself (not in combination with the program of education) will require more than 45 months (or its equivalent in accelerated payments) the plan will be included in the recommendation to the Director, Vocational Rehabilitation and Counseling Service for approval.

(38 U.S.C. 1743(b))

* * * * *

4. In § 21.3304, paragraph (b)(2) is revised as follows:

§ 21.3304 Assistance during training.

* * * * *

(b) *Adjustments in the training situation.* * * *

(2) When major difficulties cannot be corrected, the vocational rehabilitation specialist will prepare a report of pertinent facts and recommendations for action by the counseling psychologist in consultation with the Vocational Rehabilitation Panel.

* * * * *

5. In § 21.3306, paragraph (b) is revised as follows:

§ 21.3306 Reentrance after interruption.

* * * * *

(b) *Referral to the counseling psychologist.* (1) The vocational rehabilitation specialist will refer the eligible child's case to the counseling psychologist when special restorative training was interrupted—

(i) By reason of failure to maintain satisfactory conduct or progress, or

(ii) For any other reason which requires corrective action, such as change of place of training, change of course, personal adjustment, etc.

(2) The counseling psychologist will consult with the Vocational Rehabilitation Panel. If he or she determines that the conditions which caused the interruption can be overcome, he or she will approve the necessary adjustment.

(3) The counseling psychologist will make a finding of infeasibility if—

(i) All efforts to effect proper adjustment in the case have failed; and

(ii) There is substantial evidence, resolving any reasonable doubt in favor of the child (as discussed in § 3.102 of this chapter), that additional efforts will be unsuccessful.

(38 U.S.C. 1741, 1743(b))

6. In § 21.3307, paragraph (a) is revised as follows:

§ 21.3307 "Discontinued" status.

(a) *Placement in "discontinued" status.* If reentrance from "interrupted" status into a program of special restorative training is not approved by a counseling psychologist under the provisions of § 21.3306, the vocational rehabilitation specialist will place the case in "discontinued" status.

(38 U.S.C. 1743(b))

* * * * *

7. Section 21.3331 is revised as follows:

§ 21.3331 Commencing date.

The commencing date of an authorization of a special training allowance will be the date of entrance or reentrance into the prescribed course of special restorative training, or the date the counseling psychologist approved the course for the eligible child whichever is later. See also § 21.4131.

(38 U.S.C. 1742)

8. In § 21.4105, paragraph (a) is revised as follows:

§ 21.4105 Special training—38 U.S.C. Chapter 35.

(a) *Initial counseling.* A counseling psychologist in the Vocational Rehabilitation and Counseling Division will counsel a handicapped person before referring the case to the Vocational Rehabilitation Panel (established under § 21.60) for consideration as to the person's need for a course of specialized vocational training or special restorative training After consulting with the panel, and considering the panel's report, the counseling psychologist will determine if the handicapped person needs a course of specialized vocational training or special restorative training.

(38 U.S.C. 1736, 1740–1743)

* * * * *

9. In § 21.4232, paragraphs (a) (2) and (3) are revised and paragraphs (a) (4) and (d) are added so that the added and revised material reads as follows:

§ 21.4232 Specialized vocational training—38 U.S.C. Chapter 35.

(a) *Eligibility requirements for specialized vocational training.* * * *

(2) The counseling psychologist will—

(i) After consulting with the Vocational Rehabilitation Panel, determine whether such a course is in the best interest of the eligible person; and

(ii) Deny the application for the program when the course is not in the eligible person's best interest.

(3) Both the counseling psychologist and the Vocational Rehabilitation Panel will assist in developing the program and a suitable educational plan, if the course is in the eligible person's best interest.

(4) The Veterans Administration may authorize specialized vocational training for an eligible child only if the child has passed his or her 14th birthday at the time training is to begin.

(38 U.S.C. 1736)

* * * * *

(d) *Length of specialized vocational training.* When the program of specialized vocational training will exceed 45 months, the counseling psychologist will refer the program to the Director, Vocational Rehabilitation and Counseling Service for prior approval.

(38 U.S.C. 1734(b))

10. In § 21.4276, for the convenience of the reader, the introductory text of paragraph (e) is reprinted and paragraphs (a), (c), (d), and (e) (4) and (5) are revised and paragraph (e) (6) is added so that the added and revised material reads as follows:

§ 21.4276 Special assistance—38 U.S.C. Chapter 35.

(a) *Need for special assistance.* (1) The Veterans Administration will provide the assistance of a vocational rehabilitation specialist or of a counselor with assigned vocational rehabilitation specialist duties when the counseling psychologist determines that, although the eligible child does not need special restorative training, he or she will require assistance in order to pursue a program of education successfully because of—

(i) The handicapping effects of a physical or mental condition, or

(ii) Personal adjustment problems.

(2) The counseling psychologist will determine the need for this assistance.

after consulting with the Vocational Rehabilitation Panel. He or she will use information developed in the counseling process, including data and opinion obtained from medical and other specialists as appropriate in the case.

(38 U.S.C. 1741)

* * * * *

(c) *Recommendations.* (1) The Vocational Rehabilitation Panel will prepare a report stating its recommendation as to—

(i) The need for assistance, and

(ii) The factors taken into account in arriving at the recommendation.

(2) When the panel recommends that assistance is needed, the panel will include suggestions and recommendations relative to the nature of the assistance.

(3) The report will be sent to the counseling psychologist.

(38 U.S.C. 1741)

(d) *Duration.* When the counseling psychologist determines, after consideration of the findings and recommendations developed in paragraph (c) of this section, that an eligible child needs assistance he or she will inform the parent or guardian of the finding and of the underlying reasons. If the parent or guardian concurs in the finding, the Veterans Administration will provide the indicated assistance until the progress and adjustment of the eligible child in his or her program of education are such that the assistance is no longer needed.

(38 U.S.C. 1741(a))

(e) *Nature of assistance.* Assistance by the vocational rehabilitation specialist will include:

* * * * *

(4) Referring the case of an eligible child who is receiving assistance to the counseling psychologist when it appears that the need for special restorative training should be considered;

(5) Referring the case of an eligible person who is receiving assistance to the Vocational Rehabilitation Panel, when the panel's advice and assistance is needed to resolve difficulties; and

(6) Assisting the parent or guardian in locating and arranging for training by an educational institution when the eligible child is homebound. Only eligible children who qualify for training under § 21.3300 may receive such training at home from any person or organization which is not an "educational institution."

(38 U.S.C. 1743(a))

[FR Doc. 84-655 Filed 1-10-84; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 3E2891/P319; FRL-2503-5]

Benomyl; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the fungicide benomyl and its metabolites in or on the raw agricultural commodity dandelions. This proposed regulation to establish a maximum permissible level for residues of the fungicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments must be received on or before February 10, 1984.

ADDRESS:

Written comments by mail to: Program Management and Support Division (TS-757C), Offices of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703-557-1192) at the above address.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 3E2891 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of Florida.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide benomyl (methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the raw agricultural commodity dandelions at 10 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance were a 2-year dog feeding study with a no-observed-effect level (NOEL) of 500 parts per million (ppm) (12.5 milligrams per kilograms of body weight per day (mg/kg bw/day)); a 2-year rat feeding study with a NOEL of 2,500 pm (125 mg/kg bw/day); 3-generation rat reproducton study with no effect on reproductive performance up to 100 ppm (5.0 mg/kg bw/day); two teratology studies (rat and rabbit, dietary dosing), negative for teratogenic effects in rats at 129 mg/kg and in rabbits at 500 ppm (15 mg/kg bw/day); and oncogenicity studies discussed below.

A comprehensive review of the data available for the chemical was conducted for the rebuttable presumption against registration (RPAR) for benomyl, which was published in the Federal Register of December 6, 1977 (42 FR 61788).

This presumption was based on information indicating that benomyl posed the risks of mutagenicity (point mutation and nondisjunction), spermatogenic depression and teratogenic effects, acute toxicity to aquatic organisms, and significant population reduction in nontarget organisms. In the Federal Register of August 30, 1979 (44 FR 51166), the Agency published a Preliminary Notice of Determination, which concluded that benomyl continued to pose the risks noted above with the exception of point mutations and significant population reductions in nontarget organisms. In the Notice and Position Document 2/3, the Agency weighed the risks and benefits of use together, and determined that certain modifications to the terms and conditions of use were necessary to reduce the risks of use to applicators.

Subsequent to these findings, data have been made available indicating that benomyl is oncogenic in mice and additional teratogenic test have been submitted. A rereview of the currently registered and proposed uses of benomyl in light of the potential oncogenic and teratogenic adverse effects has been completed. Both benomyl and MBC, the common metabolite of benomyl and thiophanate-methyl, have been shown to be hepatocarcinogens in tests with mice. The upper limit to the oncogenic lifetime risk to the general public via worst case dietary exposure to previously published tolerances is estimated to the 7.5×10^{-5}. The incremental increase in risk from the proposed tolerance for dandelions is 2.0×10^{-7}, which is considered negligible. Benomyl has the potential to cause terathogenic effects. The NOEL for these effects is tentatively set at 30 mg/kg/day based on results from a gavage study in rats. Margins of

Safety (MOS) for teratogenicity from dietary exposure range from 254 to 600,000 (single serving basis). The MOS for reproductive effects (damage to spermatogonia and seminal vesicles) resulting from existing and approved tolerances (including this proposed tolerance) for benomyl is 210.7. The MOS for teratogenic risks resulting from ingestion of single serving of benomyl treated dandelions (raw or cooked dandelion greens) is 1,500. The Agency's position concerning the RPAR issues with benomyl was published in the Federal Register of October 20, 1982 (47 FR 46747). In the Notice of Determination Concluding the Rebuttable Presumption Against Registration for benomyl the Agency determined that the benefits of benomyl use exceed the risk of use if a dust mask is used when mixing and loading for aerial application. Registrants are required to amend their product labels to require use of protective equipment for persons who mix and load benomyl for aerial application.

The acceptable daily intake (ADI), based on the 3-generation rat reproduction study (NOEL of 100 ppm, or 5.0 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.05 mg/kg bw/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 3.0 mg/day. The theoretical maximum residue contribution (TMRC) from established tolerances for a 1.5-kg daily diet is calculated to be 1.9176 mg/day; the current action will increase the TMRC by 0.00450 mg/day (0.23 percent). Published tolerances utilize 63.92 percent of the ADI; the current action will utilize an additional 0.15 percent.

The nature of the residues is adequately understood, and an adequate analytical methodology, fluorometric spectometry or liquid chromatography employing an ultraviolet detector, is available for enforcement purposes. Secondary residues are not expected in meat or milk from the proposed use on dandelions since this item is not used as an animal feed. Continued registration of this chemical is subject to the requirements of the determination concluding the rebuttable presumption against registration for benomyl.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.294 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3E2891/P319]. All written comments filed in response to this petition will be available in the Program Management and Support Division at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesitcides and pests.

Dated: December 23, 1983.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.294 be amended by adding and alphabetically inserting the raw agricultural commodity dandelions to read as follows:

§ 180.294 Benomyl; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Dandelions	100
* * * * *	

[FR Doc. 84-329 Filed 1-10-84, 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

41 CFR Part 105-61

[ADM 7800.2]

Public Use of Records, Donated Historical Materials and Facilities in the National Archives and Records Service; Fees

AGENCY: National Archives and Records Service, GSA.

ACTION: Proposed rule.

SUMMARY: This proposed rule will revise fees charged by the National Archives and Records Service for reproduction of archival records, donated historical materials, and records filed with the Office of the Federal Register. The fees are being changed to reflect the current costs of providing the reproduction services.

DATE: Comments must be received on or before February 10, 1984.

ADDRESS: Comments shall be addressed to National Archives and Records Service (NAA), Attn: Adrienne C. Thomas, Washington, D.C. 20403.

FOR FURTHER INFORMATION CONTACT: Adrienne Thomas (202-523-3214).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purpose 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 costs to society.

List of Subjects in 41 CFR Part 105-61

Archives and records.

PART 105-61—PUBLIC USE OF RECORDS, DONATED HISTORICAL MATERIALS, AND FACILITIES IN THE NATIONAL ARCHIVES AND RECORDS SERVICE

Accordingly, GSA proposes to amend Subpart 105-61.52 as follows:

1. The authority citation for Part 105-61 reads as follows:

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

2. Section 105–61.5201 is amended by adding paragraphs (c)(3) and (c)(4), redesignating paragraph (c)(7) as (c)(9), adding a new paragraph (c)(7), and revising paragraph (c)(8) and new paragraph (c)(9) to read as follows:

§ 105–61.5201 Applicability.

* * * * *

(c) * * *

(3) Motion picture and video recording materials among the holdings of the National Archives. Prices for reproduction of these materials are available from the Motion Picture and Sound and Video Branch, General Services Administration (NNSM), Washington, D.C. 20408.

(4) Machine-readable records. Prices for duplication are available from the Machine-readable Branch, General Services Administration (NNSR), Washington, D.C. 20408.

* * * * *

(7) The fee for electrostatic copies of records filed with the Office of the Federal Register is $0.20 when the customer makes the copies. Where NARS makes the copies, the fees in § 105–61.5206(h) apply. Copies of records made by NARS staff in research rooms at NARS facilities are $0.25 per copy. NARS may restrict the size of orders copied in research rooms due to staff workload and machine limitations.

(8) Customers may request expedited service for most reproduction orders. "Rush" orders are subject to a 50-percent surcharge.

(9) Orders requiring additional expense to meet unusual customer specifications such as the use of special techniques to make a photographic copy more legible than the original document, or unusual format or background requirement for negative microfilm. Fees for these orders are computed for each order.

3. Section 105–61. 5205 is revised to read as follows:

§ 105–61.5205 Mail orders.

(a) Except for copy flow, where the minimum fee is $11.00, there is a minimum fee of $5.00 per order for reproductions ordered by mail.

(b) Orders to addresses in the United States are sent either first class or UPS depending on the weight of the order and availability of UPS service. When a customer requests special mailing services (such as Express Mail or registered mail) and/or shipment to a foreign address, the cost of the special service and/or additional postage for foreign mail is added to the cost of the reproductions.

4. Section 105–61.5206 is revised to read as follows:

§ 105–61.5206 Fee schedule.

(a) Authentication. $2.00.

(b) Still photography:

(1) Copy negative:	
4 inch by 5 inch (Black and White)	$5.00
4 inch by 5 inch (Color)	7.00
8 inch by 10 inch (Black and White)	8.75
8 inch by 10 inch (Color)	16.20
(2) Photographic print (Black and White):	
4 inch by 5 inch	3.95
8 inch by 10 inch	5.75
11 inch by 14 inch	7.10
16 inch by 20 inch	9.75
20 inch by 24 inch	12.50
22 inch by 28 inch	15.00
24 inch by 30 inch	18.50
30 inch by 40 inch	20.75
Sepia, add	5.20
(3) Slides:	
2 inch by 2 inch (Black and White)	2.60
2 inch by 2 inch (Color)	4.00

(c) Aerial prints:

10 inch by 10 inch	5.65
14 inch by 14 inch	9.00
18 inch by 18 inch	10.50
20 inch by 24 inch	10.50
27 inch by 28 inch	19.75
40 inch by 41 inch	26.50

(d) Photostat:

Paper (up to 17 inch by 23 inch)	$8.55
Film (up to 17 inch by 23 inch)	10.40

(e) Diazo (per foot)—$1.20.

(f) Microfilm:

	16mm rotary	16mm planetary	34 mm planetary	35mm oversize
(1) Negative (per frame; Customer tabs documents for microfilming	.15	.25	.25	.55
NARS identifies documents for microfilming	.20	.30	.30	.60
(2) Next generation (per foot)		16	.20	
(3) Direct duplicate (per foot)		.22	.25	

(g) Microfiche duplication (per fiche)—$.60

(h) Electrostatic copying:

(1) Paper to paper (up to 11 inch by 17 inch):	
Customer tabs documents for copying	.35
NARS identifies documents for copying	.40
(2) Paper to paper (18 inch by 24 inch)	.65
(3) Oversized electrostatic copies	1.80
Add per foot for vellum paper	.25
(4) Microfilm to paper:	
From negative (copy flow), per foot	1.00
From positive, up to 11 inch by 17 inch, work done by customer	.35
From positive up to 11 inch by 17 inch, NARS performs the work:	
First copy per roll	1.70
Next consecutive frame or duplicate	.60
Next nonconsecutive frame	.85
From positive, 18 inch by 24 inch, Work done by customer	.60
NARS performs the work:	
First copy per roll	2.20
Next consecutive frame or duplicate	1.15
Next nonconsecutive frame	1.35

(i) Sound recordings (per minute):

Reel to cassette	.50
Reel to reel (3.75 ips)	.75
Reel to reel (7.51 ips)	.00
Film to tape sound transfer—16 mm sprocketed tape	3.00
Film to tape transfer—¼ inch tape	1.40

(j) Technical services:

	Regular	Overtime
Photographer (per hour)	16.50	22.50
Microfilm preparation (per hour)	12.00	18.00
Sound and video recordings (per hour)	18.00	24.00

(k) Preservation of records. In order to preserve certain records which are in poor physical condition, NARS may restrict customers to a choice of photostatic or microfilm copies instead of electrostatic copies.

(l) Unlisted processes. Fees for reproduction processes not listed in this section § 105–61.5206 are computed upon request.

Dated: December 6, 1983.

Robert M. Warner,

Archivist of the United States.

[FR Doc. 84-646 Filed 1-10-84; 8:45 am]

BILLING CODE 6020-28-M

Notices

Federal Register
Vol 49, No. 7
Wednesday, January 11, 1934

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 6, 1984.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of 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 108-W Admin. Bldg., Washington, D.C. 20250, (202) 447-4414.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs Office of Management and Budget, Washington, D.C. 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

• Forest Service
State and Private Forestry
Accomplishment Reporting
3100-8, 3200-6, 3400-5, 3500-5, 3600-2
Annually
State or Local Governments: 265 responses; 530 hours; not applicable under 3504(h)
Howard Burnett, (703) 382-9036

• Statistical Reporting Service
Eggs, Chickens, Turkey Survey
Weekly, Monthly, Quarterly, Annually
Farm, Businesses: 73,897 responses; 10,907 hours; not applicable under 3504(h)
Lee Sandberg, (202) 447-6820

Revised

• Statistical Reporting Service
Farm Production Expenditure Survey
Annually
Farms: 50,800 responses; 19,578 hours; not applicable under 3504(h)
Lee Sandberg, (202) 447-6820

Susan B. Hess,
Acting Department Clearance Officer
[FR Doc. 84-727 Filed 1-10-84; 8:45 am]
BILLING CODE 3410-01-M

CIVIL AERONAUTICS BOARD

Application of Braniff Airways, Incorporated and Braniff, Inc. for Transfer of a Certificate of Public Convenience and Necessity

AGENCY: Civil Aeronautics Board.
ACTION: Notice of Order Instituting a Fitness Investigation of Braniff, Inc., 84-1-13, Docket 41860.

SUMMARY: The Board is issuing an order instituting a fitness investigation of Braniff, Inc.

DATES: Persons wishing to file requests for additional evidence or petitions to intervene in the Braniff, Inc. Fitness Investigation shall file their petitions in Docket 41860 by January 16, 1934.

ADDRESSES: Requests for additional evidence and petitions to intervene should be filed in Docket 41860 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on: Braniff, Inc., the Secretary of Transportation; and the Attorney General.

Service will also be required on any other person filing petitions.

FOR FURTHER INFORMATION CONTACT: Sherry L. Kinland, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. (202) 673-5333.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-1-13 is available from our Distribution Section, Room 100, 1825 Connecticut Ave., NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-1-13 to that address.

By the Civil Aeronautics Board: January 6, 1934.

Phyllis T. Kaylor,
Secretary.
[FR Doc. 84-723 Filed 1-10-84; 8:45 am]
BILLING CODE 6320-01-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed under Subpart Q of the Board's Procedural Regulations

Week ended December 30, 1983

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings. (See 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
Dec. 28, 1983.....	41907	Alfonso Airways & Export, Inc., c/o Alfonso Diaz Del Castillo, P.O. Box 6449, Hollywood, Florida 33081 Aplication of Alfonso Airways & Export, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Board's Procedural Regulations requests permanent authority to provide foreign air transportation of persons, property and mail as follows: For scheduled service between the following points: (a) Tampa, Florida to Cancun, Mexico. (b) Cancun, Mexico to Tampa, Florida. (c) Miami, Florida to San Jose, Costa Rica. (d) San Jose, Costa Rica to Miami, Florida. (e) Miami, Florida to Puerto Plata and Santo Domingo, Dominican Republic. (f) Santo Domingo and Puerto Plata, Dominican Republic, to Miami, Florida. For charter service: (a) Between any point in any State of the United States or the District of Columbia, or any other territory or possession of the United States, on one hand, and points in Canada, on the other; (b) Between any point in any State of the United States or the District of Columbia, or any other territory or possession of the United States, on one hand, and points in Mexico, on the other; (c) Between any point in any State of the United States or the District of Columbia, or any other territory or possession of the United States, on the one hand, and points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Trinidad, Aruba, the Leeward and Windward Islands and any other foreign place located in the Gulf of Mexico or the Caribbean Sea, on the other hand; (d) Between any point in any State of the United States or the District of Columbia, or any other territory or possession of the United States, on one hand, and points in British Honduras, the Canal Zone, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama and in the countries on the continent of South America, on the other hand; (e) Between any point in any State of the United States or the District of Columbia, or any other territory or possession of the United States, on one hand, and points in America Samoa, Guam, Johnson Island, the Marshall Islands, Okinawa, Wake Island and points in Australasia, Indonesia and Asia as far west as longitude 70 degrees east via a transpacific routing, on the other hand; (f) Between any point in any State of the United States or the District of Columbia, or any other territory or possession of the United States, and one hand, and points in Greenland, and Asia, as far east as (and including) India, on the other hand. Conforming Applications, Motions to Modify Scope and Answers may be filed by January 24, 1984.
Dec. 28, 1983.....	41908	Alfonso Airways & Export, Inc., c/o Alfonso Diaz Del Castillo, P.O. Box 6449, Hollywood, Florida 33081 Application of Alfonso Airways & Export, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Board's Procedural Regulation requests issuance of a certificate of public convenience and necessity authorizing it to engage in scheduled interstate and overseas air transportation of persons, property, and mail, initially between the points of Miami, Orlando, Tampa, and Tallahassee, Florida; San Juan, Puerto Rico; and Saint Thomas and Saint Croix, U S Virgin Islands. Conforming Applications, Motions to Modify Scope and Answers may be filed by January 24, 1984.
Dec. 28, 1983.....	41911	Transamerica Airlines, Inc., c/o Jeffrey A. Manley, Burwell, Hansen, Manley & Peters, 1706 New Hampshire Avenue, N.W., Washington, D.C. 20009 Application of Transamerica Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity for authority to operate between points in the United States, on the one hand, and Dublin, Ireland, on the other hand Answers may be filed by January 11, 1983.
Dec 28, 1983.....	41913	Continental Air Lines, Inc., c/o Emory N. Ellis, Fulbright & Jaworski, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036. Conforming Application of Continental Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests a certificate of public convenience and necessity authorizing it to serve U.S. Route D. 1 of the U.S. Canada Air Transport Agreement (Bilateral) (Houston/Dallas/Ft. Worth-Calgary/Admonton-Anchorage/Fairbanks). Answers may be filed by January 11, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-729 Filed 1-10-84; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

Arizona 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 Arizona Advisory Committee to the Commission will convene at 2:00 p.m. and will end at 6:00 p.m., on January 27, 1984, at the Hotel San Carlos, 106 First Street, Yuma, Arizona 85364. The purpose of the meeting is to discuss the status of the project on State employment issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Chairperson, Richard Zazueta, at (602) 247-5691 or the Western Regional Office at (213) 688-3437.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., January 27, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-653 Filed 1-10-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: Shipper's Export Declaration for In-Transit Goods.
Form numbers: Agency—7513; OMB—0607-0001.
Type of request: Revision of currently approved collection.
Burden: Unknown number of respondents; 17,000 reporting hours.
Needs and uses: The declaration is used by exporters to report shipments of merchandise from one foreign country to another through the United States. The declaration also serves as a basic source document from which the Bureau of the Census compiles the U.S. statistics on outbound in-transit shipments.
Affected public: Individuals or households, businesses or other for-profit institutions, non-profit institutions.
Frequency: On occasion, monthly.
Respondent's obligation: Mandatory.
OMB desk officer: Timothy Sprehe, 395-4814.

Agency: International Trade Administration.
Title: Antidumping Administrative Reviews.
Form numbers: Agency—ITA-363P, ITA-364P; OMB—N/A.
Type of request: Existing collection in use without an OMB control number.
Burden: 1,400 respondents; 12,000 reporting hours.
Needs and uses: Collected information consists of sales and cost data of commodities covered by an outstanding antidumping duty order or finding. It is required from all know exporters in the country of the finding for a given period and is used to determine any applicable dumping duties and to set a cash deposit rate.
Affected public: State or local governments, businesses or other for-profit institutions, small businesses or organizations.
Frequency: Annually.

Respondent's obligation: Required to obtain or retain a benefit.
OMB desk officer: Ken Allen, 395-3785.

Agency: International Trade Administration.
Title: Exception to Requirement of Order Party Signature.
Form numbers: Agency—N/A; OMB—0625-0024.
Type of request: Reinstatement of a previously approved collection for which approval has expired.
Burden: 12 respondents; 3 reporting hours.
Needs and uses: When an applicant for an export license does not have a definite order for export, he may request a waiver of the order requirement by submitting, with his application, a statement explaining why an exception should be granted.
Affected public: Businesses or other for-profit institutions, small businesses or organizations.
Frequency: On occasion.
Respondent's obligation: Required to obtain or retain a benefit.
OMB desk officer: Ken Allen, 395-3785.

Agency: International Trade Administration.
Title: Foreign Trade Zones (FTZ) Application.
Form numbers: Agency—N/A; OMB—N/A.
Type of request: Existing collection in use without an OMB control number.
Burden: 35 respondents; 2,675 reporting hours.
Needs and uses: The Foreign Trade Zones Act requires that application be made to the FTZ Board for authority to establish a foreign-trade zone project in a port of entry community. Applicants are usually a city, a state, a port authority, or other public or quasi-public organization.
Affected public: State or local governments; businesses or other for-profit institutions, non-profit institutions, small businesses or organizations.
Frequency: On occasion.
Respondent's obligation: Required to obtain or retain a benefit.
OMB desk officer: Ken Allen, 395-3785.

Agency: International Trade Administration.
Title: Swedish Consignee's Letter of Assurance.
Form numbers: Agency—N/A; OMB—N/A.
Type of request: Existing collection in use without an OMB control number.
Burden: 125 respondents; 63 reporting hours.
Needs and uses: Under this procedure U.S. exporters request their Swedish customers to voluntarily submit a letter affirming that they will not knowingly divert U.S. imports contrary to U.S. law.
Affected public: Businesses or other for-profit institutions, small businesses or organizations.
Frequency: On occasion.
Respondent's obligation: Required to obtain or retain a benefit.
OMB desk officer: Ken Allen, 395-3785.

Agency: International Trade Administration.
Title: General License GIT Shipments Originating in Canada.
Form numbers: Agency—N/A; OMB—N/A.
Type of request: Existing collection in use without an OMB control number.
Burden: 15,000 respondents; 1,250 reporting hours.
Needs and uses: The Export Administration Regulations require that for exports from Canada moving in transit through the United States to a foreign destination, under General License, a copy of Form B-13, Canadian Customs Entry, shall be presented to the Customs Office at the port of export rather than at the port of entry. The information on Form B-13 is used to verify the information on the Shipper's Export Declaration.
Affected public: Businesses or other for-profit institutions, small businesses or organizations.
Frequency: On occasion.
Respondent's obligation: Required to obtain or retain a benefit.
OMB desk officer: Ken Allen, 395-3785.

Agency: International Trade Administration.
Title: Written Assurance for Exports of Technical Data Under General License.
Form number: Agency—N/A; OMB—N/A.
Type of request: Existing collection in use without an OMB control number.
Burden: 250 respondents; 125 reporting hours.
Needs and uses: This procedure requires that certain written assurances be provided by foreign importers to U.S. exporters of certain types of technical data and its direct products so that such data will not be shipped to unauthorized destinations.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations.
Frequency: On occasion.
Respondent's obligation: Required to obtain or retain a benefit.
OMB desk officer: Ken Allen, 395-3785.

Agency: International Trade Administration.
Title: Statement by Foreign Importer of Aircraft or Vessel Repair Parts.
Form numbers: Agency—ITA-686P; OMB—N/A.
Type of request: Existing collection in use without an OMB control number.
Burden: 50 respondents; 13 reporting hours.
Needs and uses: This form is used to simplify the application requirements, and the use abroad, of U.S. origin commodities for both foreign importers and U.S. exporters, as follows: (1) It permits the filing of one annual document instead of a number of supporting statements; and (2) it provides a blanket approval for supplying U.S. origin commodities to aircraft and vessels of friendly countries instead of requiring the foreign importer to send the usual documents to his U.S. exporter.
Affected public: Businesses or other for-profit institutions, small businesses or organizations.
Frequency: On occasion.
Respondent's obligation: Required to obtain or retain a benefit.
OMB desk officer: Ken Allen, 395-3785.

Agency: International Trade Administration.
Title: Statement by Ultimate Consignee or Purchaser.
Form numbers: Agency—ITA-629P; OMB—N/A.
Type of request: Existing collection in use without an OMB control number.
Burden: 40,000 respondents; 20,000 reporting hours.
Needs and uses: This form collects certain facts necessary to determine the merit of an export license application. Information on the end-use and the ultimate destination of commodities involved in a proposed export transaction is used to decide whether to approve or reject an application.
Affected public: Businesses or other for-profit institutions, small businesses or organizations.
Frequency: On occasion.
Respondent's obligation: Required to obtain or retain a benefit.
OMB desk officer: Ken Allen, 395-3785.

Agency: International Trade Administration.
Title: Statement by Foreign Consignee in Support of Special License Application.
Form numbers: Agency—ITA-6052P; OMB—N/A.
Type of request: Existing collection in use without an OMB control number.
Burden: 5,000 respondents; 2,500 reporting hours.
Needs and uses: U.S. exporters provide information on this form which is considered in determining whether

U.S. exporters are eligible to participate in special license procedures.
Affected public: Businesses or other for-profit institutions, small businesses or organizations.
Frequency: On occasion.
Respondent's obligation: Required to obtain or retain a benefit.
OMB desk officer: Ken Allen, 395–3785.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Edward Michals,
Departmental Clearance Officer.

[FR Doc. 84–703 Filed 1–10–84; 8.45 am]
BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Order No. 239]

Resolution and Order Approving the Application of the Massachusetts Port Authority for a Special-Purpose Subzone in Lawrence, Massachusetts, Within the Lawrence Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Massachusetts Port Authority, grantee of Foreign-Trade Zone 27, filed February 3, 1983, requesting special-purpose subzone status for the textile processing plant of Lawrence Textile Shrinking Company in Lawrence, Massachusetts, within the Lawrence Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal would be in the public interest if activity on merchandise to be imported is limited to the types of non-manufacturing operations listed in the application, approves the application subject to the conditions that no activity shall be conducted under zone procedures that would change Customs classifications or country of origin on merchandise destined for the domestic market.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority an appropriate Board Order.

Grant of Authority To Establish a Foreign-trade Subzone in Lawrence, Massachusetts

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Massachusetts Port Authority, grantee of Foreign-Trade Zone No. 27 in Boston, has made application (filed February 3, 1983, FTZ Docket No. 1–83, 48 FR 6145) in due and proper form to the Board requesting a special-purpose subzone at the textile processing facility of the Lawrence Textile Shrinking Company in Lawrence, Massachusetts, within the Lawrence Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval is given subject to the conditions stated in the resolution accompanying this action;

Now, therefore, in accordance with the application filed February 3, 1983, the Board hereby authorizes the establishment of a subzone at Lawrence Textile Shrinking Company's facility in Lawrence, Massachusetts, designated on the records of the Board as Foreign-Trade Subzone No. 27C at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations, and those stated in the resolution accompanying this action, and also to the following express conditions and limitations:

Activities conducted under zone procedures shall be limited to the non-manufacturing processes described in the application.

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 5th day of January 1984 pursuant to Order of the Board.

Foreign-Trade Zones Board.
William T. Archey,
Acting Assistant Secretary of Commerce for Trade Administration Chairman, Committee of Alternates.

Attest:
John Dupont,
Executive Secretary.

[FR Doc. 84–707 Filed 1–10–84; 8.45 am]
BILLING CODE 3510-25-M

International Trade Administration

[C–535–001]

Cotton Shop Towels from Pakistan; Final Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters

in Pakistan of cotton shop towels, as described in the "Scope of Investigation" section of this notice. The net subsidy is 12.67 percent *ad valorem*. The U.S. International Trade Commission (ITC) will determine whether these imports are materially injuring, or threatening to materially injure, a U.S. industry, within 45 days of the date of publication of this notice.

EFFECTIVE DATE: January 11, 1984.

FOR FURTHER INFORMATION CONTACT: Paul Thran, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, (202) 377-3963.

SUPPLEMENTARY INFORMATION: @Based upon our investigation, we determine that the government of Pakistan (GOP) provides certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), to manufacturers, producers, or exporters in Pakistan of cotton shop towels, as described in the "Scope of Investigation" section of this notice.

- Compensatory Rebate;
- Excise Tax Rebate;
- Sales Tax Rebate;
- Customs Duty Rebate;
- Income Tax Reduction;
- Export Financing; and
- Export Credit Insurance.

We determine the net subsidy to be 12.67 percent *ad valorem*.

Case History

On July 29, 1983, we received a petition from counsel for Milliken and Company filed on behalf of the U.S. industry producing cotton shop towels. The petition alleged that certain benefits which constitute subsidies within the meaning of section 701 of the Act are being provided, directly or indirectly, to manufacturers, producers, or exporters in Pakistan of cotton shop towels. We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation, and on August 18, 1983, we initiated an investigation (48 FR 38661).

Since Pakistan is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the International Trade Commission (ITC) of our initiation. On September 12, 1983, the ITC determined that there is a reasonable indication that imports of cotton shop towels are materially injuring a U.S. industry.

We presented a questionnaire concerning the allegations to the Embassy of Pakistan in Washington, D.C. on September 6, 1983 and requested a response by October 7, 1983. In a letter dated September 21, 1983, the GOP requested a postponement of the due date of the response. We granted the GOP a one week extension.

The GOP submitted a response to our questionnaire on October 18, 1983. On October 24, 1983, the Department preliminarily determined that there was reason to believe or suspect that the GOP provides certain benefits which constitute subsidies to manufacturers, producers, or exporters in Pakistan of cotton shop towels (48 FR 49678). We estimated the net subsidy to be 11.87 percent *ad valorem* and the following programs were preliminarily determined to confer subsidies:

- Compensatory Rebate;
- Excise Tax Rebate;
- Customs Duty Rebate;
- Sales Tax Rebate;
- Income Tax Reduction; and
- Export Financing.

The GOP submitted a supplementary response to our questionnaire on November 16, 1983. Between November 14 and 28, 1983, we conducted a verification, in Pakistan, of the information in the responses.

We provided opportunities for oral and written comments by the the public on our preliminary determination. No request was received for a public hearing.

Scope of Investigation

The product covered by this investigation is shop towels of cotton. The merchandise is currently classified under item number 366.2740 of the *Tariff Schedules of the United States Annotated* (TSUSA). The cotton shop towel industry in Pakistan is an unorganized cottage industry. The GOP has provided us with a list of companies which received authorization to export shop towels to the United States. The period for which we are measuring subsidization is 1982.

Analysis of Programs

In its response, the GOP provided data for the applicable period. The Towel Manufacturers' Association of Pakistan (TMAP) also provided a response. However, due to the unorganized cottage industry nature of Pakistani shop towel production, the TMAP could provide company-specific information on only some of the companies. Even after verification, complete information on the two company-specific programs, the income tax reduction and preferential export financing, was unobtainable. Therefore, we used the best information available, which consisted of information from the petition, in valuing these two benefits. Based upon our analysis of the petition, the responses to our questionnaire, and all public comments, we have determined the following.

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Pakistan of cotton shop towels under the programs described below.

A. *Compensatory Rebate.* The petitioner alleged that the government of Pakistan provides exporters of shop towels with a compensatory cash rebate which is calculated as 12.5 percent of the f.o.b. value of the exported product.

On August 28, 1983, the GOP reduced the value of the cash rebate for shop towels to 7.5 percent. Our policy has been to recognize fundamental changes in benefits applicable to all recipients in programs where we can confirm the change and where we have no reason to believe that the benefit has been shifted to other program. Both criteria are met in this case.

As the GOP failed to provide information linking the amount of the rebate to actual indirect taxes borne by shop towels, we determine that the GOP pays the compensatory rebate without regard to specific duties and taxes incurred in the production of shop towels. Therefore, it is countervailable. We find the value of the compensatory rebate to be 7.5 percent *ad valorem*.

B. *Excise Tax and Sales Tax Rebates.* The petitioner also alleged that the GOP provides a 3.8 percent excise tax rebate and a 0.35 percent sales tax rebate on exports of shop towels. We found the actual value of the sale tax rebate to be 0.11 percent. The reports covering the calculations of the values of the rebates showed that the GOP used information from a very limited number of companies in calculating the incidence of indirect taxes on grey cloth (shop towels) We find that the reports do not show the required linkage between the rebates given and the indirect tax incidence. Therefore, the two programs are countervailable and we find the values of the benefits to be 3.8 and 0.11 percent *ad valorem*, respectively.

C. *Customs Duty Rebate.* The petitioner also alleged that the GOP provides a 2 percent customs duty rebate on exported goods. The program is in effect a duty drawback. The GOP provided information on the correct value of this program. The value of the customs duty rebate is 0.37 percent. We verified that this value is correct.

During the verification, we found that the GOP pays this rebate on items not physically incorporated into the exported product. The sizing chemicals involved are used in the production process to stiffen, straighten, and shrink the yarn. However, they do not remain in the finished product. Therefore, the customs dity rebate is countervailable. The total value of benefit from this program is 0.37 percent *ad valorem.*

D. *Income Tax Reduction.* The GOP provides a 55 percent reduction of taxes on income generated by products made for export. We determined this program to be countervailable in the previous investigation of textile products from Pakistan. As receipt of this benefit is based solely on export performance, it is countervailable. As complete information on company use of this program was unobtainable, we used the information in the petition for valuing this benefit. The *ad valorem* value of the benefit is 0.013 percent.

E. *Export Financing.* The GOP permits short-term export financing to be provided to exporters at rates considerably lower than those otherwise charged on short-term loans in Pakistan. As receipt of this benefit is based solely on export performance, it is countervailable. As complete information on company use of this program was unobtainable, we used the information in the petition for valuing this benefit. The *ad valorem* value of the benefit is 0.08 percent.

F. *Export Credit Insurance.* The GOP, through the Pakistan Insurance Corporation, provides exporters with insurance against non-payment by foreign purchasers. Petitioner alleged that the premiums charged are insufficient to cover the long term operating costs of the program. Our verification showed that this was true. As we had insufficient information on the use of this program by the shop towel exporters, we used the best information available. There is no commercial benchmark. We calculated the benefit by determining the difference between administrative expenses and premiums charge and allocating it over the value of total exports insured for 1982. We find the value of the benefit of this program to be 0.8 percent *ad valorem.*

II. Program Determined Not To Be Used

We determine that the following program was not used by manufacturers, producers, or exporters of cotton shop towels from Pakistan.

Import Duty Rebates

The petitioner alleged that the GOP provides rebates of import duty on import of textile equipment. The GOP stated that this program applies only to imports of entire textile factories and not to individual pieces of equipment. The GOP also stated that the shop towel industry did not use this program.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During this verification, we followed normal procedures. These included meetings and inspection of documents with government officials and on-site inspection of the records and operation of the companies exporting the merchandise under investigation to the United States.

Comments

All comments received are addressed in the sections of this notice concerning our findings.

Final Determination

Based upon our investigation and in accordance with section 705(a)(1) of the Act, we determine that manufacturers, producers, or exporters in Pakistan of cotton shop towels are being provided with certain benefits which constitute subsidies within the meaning of the countervailing duty law.

Continuation of Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to continue suspension of liquidation of all entries of cotton shop towels from Pakistan which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register, and to require a cash deposit or bond for each entry of the subject merchandise in the amount of 12.67 percent *ad valorem.* The bond or cash requirements established in our preliminary determination are no longer in effect.

ITC Notification

In accordance with section 705(c)(1)(A) of the Act, we will notify the ITC of our determination. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC determines that such injury does exist, we will issue a countervailing duty order directing Customs officials to assess a countervailing duty on cotton shop towels from Pakistan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation equal to 12.67 percent *ad valorem.* This determiation is published pursuant to section 705(d) of the Act.

Dated: January 5, 1984.

Willian T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-702 Filed 1-10-84, 8:45 am]

BILLING CODE 3510-DS-M

[A-583-010]

Preliminary Determination of Sales at Less Than Fair Value; Acrylic Film, Strips and Sheets, at Least 0.030 Inch in Thickness, From Taiwan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that acrylic film, strips and sheets, at least 0.030 inch in thickness ("acrylic sheet"), are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Administration (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin, as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by March 19, 1984.

EFFECTIVE DATE: January 11, 1984.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-3003.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that there is a reasonable basis to

believe or suspect that acrylic sheet from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act).

The weighted-average margins on all sales are 2.93, 0.66, and 1.06 percent from Chi Mei Industrial Company ("Chi Mei"), Jiuh Mei Enterprise Company ("Jiuh Mei") and Hsin Hwa Chemical Company ("Hsin Hwa") (respondents), respectively.

If this investigation proceeds normally, we will make our final determination by March 19, 1984.

Case History

On July 28, 1983, we received a petition filed by E.I. du Pont de Nemours and Company, Inc. of Wilmington, Delaware. In accordance with the filing requirements of § 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petitioner alleged that acrylic sheets imported from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring or are threatening to materially injure, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on August 17, 1983 (48 FR 38660). On September 21, 1983, the ITC found that there is a reasonable indication that imports of acrylic sheet are materially injuring, or are threatening to materially injure, a United States industry.

We are presented a questionnaire on September 13, 1983, to the three respondents who actively participated in this investigation: Chi Mei, Jiuh Mei and Hsin Hwa. These three firms are reported to account for more than 90 percent of the exports of acrylic sheet from Taiwan to the United States during the period of investigation. We received the responses on October 31, 1983. Subsequently, we received additional data and explanations in letters directed to portions of the respose that were incomplete, inaccurate or unclear. Where questions remain, we will seek further clarification and additional information during the verification.

Scope of Investigation

The merchandise covered by this investigation is a acrylic film, strips and sheets, at least 0.030 inch thick. It consists of polymerized methyl methalcrylate monomer which is formed into film, strips or sheets by cell casting, continuous casting or extrusion. Acrylic sheet may have a flat or patterned surface and may be transparent, translucent or opaque, clear, white, black or colored. It is generally used as a glazing material and in lighting fixtures, laminated structures, signs, displays, chair mats and other fabricated items. It is currently classified under item numbers 771.4100 and 771.4500 of the

Tariff Schedules of the United States Annotated (1983) (TSUSA)

We investigated sales of acrylic sheet from Taiwan during the period from February 1 to July 31, 1983.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the acrylic sheet to represent the United States price for the sales by each respondent because the merchandise was sold to unrelated purchasers prior to its importation into the United States and the manufacturers know its destination at the time of sale. We calculated the purchase price for each manufacturer based on the c.i.f. or c. & f. (U.S. port) packed price.

In accordance with section 772(d)(1)(B) and (C) of the Act, for Chi Mei we added an amount for duty drawback and indirect taxes rebated or not collected by reason of exportation of the merchandise to the United States. We made deductions for inland freight in Taiwan, ocean freight, marine insurance where appropriate, export stamp tax, export promotion fees and export brokerage.

For Jiuh Mei we added duty drawback. Jiuh Mei did not report taxes rebated or not collected by reason of exportation in its response. We made deductions for inland freight in Taiwan, ocean freight, marine insurance where appropriate, export stamp taxes, export promotion fees and export brokerage.

For Hsin Hwa, which is located in a foreign trade zone, the duty drawback and tax rebates are reported to be inapplicable. We made deductions for inland freight in Taiwan, ocean freight, marine insurance where appropriate, export stamp taxes, export promotion fees and export brokerage.

Foreign Market Value

In accordance with §353.3 of the Commerce Regulations (19 CFR 353.3) we used home market sales for determination of foreign market value for the respondent Chi Mei. Because respondents Jiuh Mei and Hsin Hwa reported no sales of acrylic sheet in the home market, we based foreign market value on sales in the third country in which they had the largest volume of sales of acrylic sheet, in accordance with §353.5(c)(2) of the Commerce Regulations (19 CFR 353.5 (c)(2)). The appropriate third country markets were Australia for Jiuh Mei and Hong Kong for Hsin Hwa. For these two firms we calculated foreign market value based on c.i.f. or c & f. (third country port) prices to unrelated purchasers.

For Chi Mei we deducted inland freight in Taiwan. We made circumstance of sale adjustments for differences between home market and U.S. credit expense, bad debt and warranty expense, and after-sale warehousing, where appropriate. We made adjustments for packing differences between the U.S. and home market. We also made an adjustment for differences between commissions on sales to the United States and home market indirect selling expenses allowed as an offset to U.S. commissions in accordance with § 353.15(c) of the Commerce Regulations. Identical merchandise was compared in the two markets where possible. Where identical merchandise was not sold in both markets, we compared merchandise identical in size and color class and made adjustments for differences in cost based on differences in thickness, in accordance with section 353.16 of the Commerce Regulations.

For Jiuh Mei we added duty drawback to make the adjustment comparable to that made for exported merchandise under U.S. price according to section 772(d)(1)(B) of the Act. We made deductions for inland freight in Taiwan, ocean freight, marine insurance, export stamp taxes, export promotion fees, and export brokerage. Packing was reported to be identical in both markets and therefore required no adjustment. Where appropriate, we made adjustments for the cost of physical differences in the merchandise, based on differences in thickness. For Hsin Hwa, all these calculations were also made with the exception of duty drawback, which is reported not to be applicable because the company is located in a foreign trade zone. Adjustments were made for the cost of physical differences in merchandise sold by Hsin Hwa in the two markets based on differences in thickness and differences between clear and colored acrylic sheet, since Hsin

Hwa's response established that its prices for clear sheet were distinct from prices for colored sheets and the applications of clear and colored sheet may differ.

We have preliminarily disallowed an adjustment to price claimed by all three manufacturers for cost differences attributable to the production of different quantities of merchandise. The data submitted do not indicate that quantity discounts exist or that differences in prices are due to production cost differentials as provided for in § 353.14 of the Commerce Regulations.

Chi Mei claimed circumstance of sale adjustments for salesmen's travel and entertainment expenses. We did not allow these circumstance of sale adjustments for purposes of the preliminary determination, because they do not appear to be directly related to the sales of the merchandise under investigation, as required by § 353.15 of the Commerce Regulations. However, we included these expenses in the indirect selling expenses used as an offset to U.S. commissions. Chi Mei also claimed a circumstance of sale adjustment for advertising assumed on behalf of its customers. We did not allow this adjustment preliminarily because the nature of the claimed advertising is not clear. We will examine these claims in detail during our verification of Chi Mei's response and may consider them in making our final determination.

Chi Mei claimed a level of trade adjustment on the ground that it acts as a distributor in the home market while it sells to distributors in the U.S. We disallowed the claimed level of trade adjustment, because the data did not reveal differences in prices due to differences in levels of trade.

Jiuh Mei claimed an adjustment for differences in merchandise between white and other colors. We did not allow the adjustment. For sales of acrylic sheet in the third country market, there were no identifiable differences in price or market value between white acrylic sheet and acrylic sheet of other colors, as required by § 353.16 of the Commerce Regulations for an adjustment, nor was such a price difference discernable with respect to sales of acrylic sheet by Jiuh Mei in the United States.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of acrylic sheet from Taiwan, which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer	Weighted-average margin percentage
Jiuh Mei Enterprise Company	0.66
Hsin Hwa Chemical Company	1.06
Chi Mei Industrial Company	2.93
All Other Manufacturers/Producers/Exporters	2.24

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching a final determination in this investigation.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 353.47 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on February 2, 1984, at the U.S. Department of Commerce, Room 3092, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by January 26, 1984. Oral presentations will be limited to issues raised in the briefs. All written views by those not participating in the hearing should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Dated: January 4, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-704 Filed 1-10-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Civil Operational Remote Sensing Satellite Advisory Committee; Meeting

AGENCY: National Environmental Satellite, Data, and Information Service, NOAA, Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: The Civil Operational Remote Sensing Satellite Advisory Committee was established by the Secretary of Commerce to advise the Department on its responsibilities for the civil operational land and weather satellite programs and proposals to transfer these satellite systems to the private sector.

DATES: The open meeting is scheduled for Thursday and Friday, January 26–27, 1984, 9:00 a.m.—about 4:30 p.m. on Thurday and 9:00 a.m.—about 12:00 noon on Friday.

ADDRESS: U.S. Department of Commerce, Conference Room 6802, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washinigton, D.C.

Agenda: The Committee will be reviewing the technical and policy implications of transferring the Landsat system to the private sector including the Request for Proposals issued on January 3, 1984.

Public participation: About 60 seats will be available on a first-come, first-served basis. Written statements may be submitted by the public before or after the meeting and should be directed to Dr. John H. McElory, Assistant Administrator for Satellite, Data, and Information Services, NOAA, Washington, D.C. 20230. Minutes of the meeting will be available after certification by the Committee Chairman 30 days after the meeting.

FOR FURTHER INFORMATION: Contact the Committee Executive Secretary, Dr. Richard J. Keating, (301)

763–5904, or the Committee Staff Officer, Ms. Peggy Harwood, (301) 763–7821, External Relations Staff, National Environmental Satellite, Data, and Information Service, NOAA, (E/ER), Washington, D.C. 20233.

Dated: January 5, 1984.

Dr. John H. McElroy,

Assistant Administrator for Environmental Satellite, Data, and Information Services.

[FR Doc. 84-651 Filed 1-10-84; 8:45 am]

BILLING CODE 3510-12-M

DEPARTMENT OF DEFENSE

Domestic Household Goods Program

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of final decision.

SUMMARY: The Secretary of Defense on 29 November 1983 determined that the modification of procedures associated with the acquisition of rates for interstate shipments should take place as proposed in 48 FR 45144 (3 OCT 83) and FR 49688 (27 OCT 83). In making this determination, he considered all relevant factors involved.

A solicitation to participate in the new program was mailed out to all DOD—approved carriers of record on 30 November 1983. Industry—proposed modifications to the original solicitation were for the most part adopted.

An interim message change to implement the new rate acquisition procedures was made to the applicable regulation, DOD 4500.34-R. This change will be incorporated in the next revision of this regulation.

FOR FURTHER INFORMATION CONTACT: LTC Robert P. Coleman, HQ Military Traffic Management Command, ATTN: MT–PPC (Room 408), 5611 Columbia Pike, Fall Church, VA 22041

SUPPLEMENTARY INFORMATION: Written comments were considered by the Military Traffic Management Command (MTMC) in accordance with the references referred to above. These comments generally raised 20 issues which were individually evaluated. Considered replies to each may be obtained by contracting the individual named above.

These determinations are being made under the authority of 10 USC 2301–2314, DoD Directive 4500.9, and DoD 4500.34–R.

Dated: January 6, 1984.

Nathan R. Berkley,

Colonel, GS, Director of Personal Property.

[FR Doc. 84-668 Filed 1-10-84; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee has been scheduled as follows:

Thursday, 16 February 1984, Rosslyn, VA

The entire meeting, commencing at 0900 hours is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on SIGINT Support to Naval Operations.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

January 6, 1984.

[FR Doc. 84-667 Filed 1-10-84; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Supercomputer Applications; Advisory Committee Meeting

The Defense Science Board Task Force on Supercomputer Applications will meet in closed session on 13–14 February 1984 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meetings on 13–14 February 1984 the Defense Science Board Task Force on Supercomputer Applications will review current Service applications of intelligence computing and revise a draft interim report.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. I, (1976)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

January 5, 1984.

[FR Doc. 84-669 Filed 1-10-84; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of The Army

Intent To Prepare a Draft Environmental Impact Statement for Arthur Kill Channel—Howland Hook Marine Terminal Navigation Study

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: 1. Description of Proposed Action—Deepen channel (Reach 2 and 3) generally along existing lines to 42 feet between the confluence of Newark Bay, Kill Van Kull and Arthur Kill down to the end of the Howland Hook Terminal. Continue deepening the channel (Reach 1) generally along existing lines to 40 feet from the Howland Hook Terminal down to the Exxon Bayway Refinery approximately ½ mile south of the Goethals Bridge. The existing channel is 35 feet deep.

2. Reasonable Alternatives:

(1) No Action

(2) Widening and deepening channel to allow two-way deep draft traffic.

3. Scoping Process:

a. Public Involvement—Coordination and scoping began with public notice issued Jan. 1980. A second notice was issued June 1981 detailing Plan of Study. Between then and now contacts were made to further refine and update concerns.

Public views will be continuously solicited during this stage towards reaching decisions on acceptable plans and environmental concerns.

b. Significant Issues Requiring In-depth Analysis:

(1) Mudflats north of Channel

(2) Shooters Island

(3) Project area wetlands

(4) Project area water quality

c. Assignments—Federal agencies having jurisdiction under law will be asked to be a cooperating agency.

d. Environmental review and consultation—Cooperating agencies as well as appropriate State environmental agencies will be consulted during EIS preparation. Any comments on this project can be addressed to the project manager listed below.

4. Scoping Meeting will not be held.

5. Estimate date of statement availability Oct. 1984, Address:

Project Manager (COE), Pamela Tames, Attn: NANPL–FN, Tel No. (212) 264–9077.

EIS Coordinator (COE), Joseph Debler, Attn: NANPL–E, Tel No. (212) 264–4663.

U.S. Army Engineer District, New York, 26 Federal Plaza, New York, N.Y. 10007.

Dated: January 3, 1983.

Samuel P. Tosi, P.E.,

Chief, Planning Division.

[FR Doc. 84-663 Filed 1-10-84; 8:45 am]

BILLING CODE 3710-06-M

DEPARTMENT OF EDUCATION

Advisory Council on Dependents' Education; Meeting

AGENCY: Advisory Council on Dependents' Education.

ACTION: Notice of Open Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education, of two standing committees concerning education programs and administration, and of two ad hoc committees concerning the Comprehensive Study of DoDDS. This notice also describes the functions of the Council. Notice of these meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend.

DATE: The Advisory Council on Dependents' Education: February 6 and 8, 9:00 a.m. to 5:00 p.m.

Committees: February 7, 9:00 a.m. to 4:00 p.m.

ADDRESS: Rosslyn Westpart Hotel, Dogwood Rooms A and B, 1900 N. Fort Myer Drive, Rosslyn, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Dr. William F. Keough, Administrator of Education for Overseas Dependents, 400 Maryland Avenue, S.W., Room 2083, Washington, D.C. 20202, (202) 245-8011.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under section 1411 of the Defense Dependents' Education Act of 1978, as amended (20 U.S.C. 929). The Council is established to recommend to the Director general policies for operation of the defense dependents' education system with respect to curriculm selection, administration, and operation of the system

The meeting of the Council is open to the public. The proposed agenda for the full Council on February 6 includes: A report of the Administrator on Council matters, a progress report by the Director, a report by the Director on the current status of previously expressed ACDE concerns, and presentations by DoDDS staff members on the DoDDS response to recommendations made by recent studies of U.S. education, the master teacher pilot plan in Panama, education of children at isolated locations, tuition assistance systemwide, military construction projects, and sponsorship programs systemwide. The proposed agenda for the full Council on February 8 includes reports by the committees.

The proposed agenda for the Education Program Committee on February 7 includes education of children at isolated locations, retention of students, sponsorship programs, and the DoDDS response to recommendations made by recent studies of U.S. education.

The proposed agenda for the Administration Committee on February 7 includes year-end reports of the local education advisory committees, the master teacher pilot plan in Panama, tuition assistance, military construction projects, and appeals of the local school advisory committees.

Records are kept of all Council proceedings and are available for inspection at the office of the Advisory Council on Dependents' Education, 400 Maryland Avenue, S.W., Room 2083, Washington, D.C., from the hours of 8:30 a.m. to 5:30 p.m.

Dated: January 4, 1984.

A. Wayne Roberts,

Deputy Under Secretary for Intergovernmental and Interagency Affairs.

[FR Doc. 84-570 Filed 1-10-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Meeting Change

ACTION: Notice of Meeting Change.

The following change has occurred for the meeting of the Army Science Board ad hoc subgroup on Army Leadership, which was announced in the Federal Register issue of Tuesday, December 20, 1983 (48 FR 56254), Federal Register Document Number 83-33662:

Place of Meeting—US Army Training and Doctrine Command, Ft. Monroe, Virginia.

Dates of Meeting—Thursday and Friday, January 26 and 27, 1984.

The above meeting changes the previous meeting scheduled for the Armed Forces Staff College, Norfolk, Virginia on January 27, 1984. There is no change to the previously announced meeting to be held at the Pentagon on January 25, 1984.

John O. Roach, II,

DA Liaison Officer with the Federal Register.

[FR Doc. 84-733 Filed 1-10-84; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Grand Junction, Colorado; Change in Schedule for Issuing Draft Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Compliance with National Environmental Policy Act; Notice of Change in Schedule for Issuing Draft Environmental Impact Statement.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to postpone completion of a Draft EIS regarding selection of an appropriate remedial action to stabilize or control mill tailings derived from the inactive uranium mill near Grand Junction, Colorado.

The original schedule for compliance with the National Environmental Policy Act (NEPA) provided for public review of the Draft EIS in late 1983. The new schedule postpones further work on the Draft EIS until January 1985 with public review intended to take place in the Spring of 1985. Remedial action is still scheduled to begin in the Fall of 1986.

On completion of the Draft EIS, its availability will be announced in the Federal Register and local news media, and comments will be solicited. Comments on the Draft EIS will be considered in preparing the Final EIS.

ADDRESS: General information on the process followed by the DOE in preparing environmental impact statements may be obtained from the Office of Environmental Compliance, Office of the Assistant Secretary for Environmental Protection, Safety, and Emergency Preparedness, U.S. Department of Energy, Attn: Mr. Steven R. Woodbury, Room 4G-064, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-4610. Additional information may be obtained from the Uranium Mill Tailings Remedial Action Project, U.S. Department of Energy, Albuquerque Operations Office, 5301 Central Avenue, NE., Suite 1700, Albuquerque, New Mexico 87108, Attn: Mr. James A. Morley, Project Manager.

SUPPLEMENTARY INFORMATION: The DOE published a Notice of Intent (48 FR 2817) on January 21, 1983, regarding the preparation of an EIS and conduct of pubic scoping meetings for remedial actions to be performed at the Grand Junction inactive uranium mill site.

Scoping meetings were held in Grand Junction on February 8 and 9, 1983.

In the Notice of Intent, the DOE stated that "After the completion of a Final EIS, the plan for remedial action on the Grand Junction tailings will be selected, probably in 1984." The DOE has adjusted the EIS schedule to reflect the extra time required for remedial action on vicinity properties as well as the time required for additional data collection and engineering studies. The schedule adjustment allows remedial action on the vicinity properties to be completed at approximately the same time as remedial action on the tailings pile. The additional time is also necessary to fully evaluate the remedial action options for the tailings pile and ensure their compliance with standards for the protection of public health, safety, and environment promulgated by the Environmental Protection Agency (40 CFR Part 192).

Members of the public may inspect documents, including the EIS Implementation Plan, to be used in preparing the Draft EIS at the following locations:

Freedom of Information Reading Room, Room 1E–190, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.
Bendix Field Engineering Corporation Library, P.O. Box 2557, Grand Junction, CO 81501.
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Rifle Branch Library, 337 East Avenue, Rifle, CO 81650.
Regional Energy/Environment Information Center, Denver Public Library, 1357 Broadway, Denver, CO 80210.

Dated at Washington, D.C., this 3rd day of January 1984, for the United States Department of Energy.

William A. Vaughan,

Assistant Secretary, Environmental Protection, Safety, and Emergency Preparedness.

[FR Doc. 84–743 Filed 1–10–84; 8:45 am]
BILLING CODE 6450–01–M

Rifle, Colorado; Change in Schedule for Issuing Draft Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Compliance with National Environmental Policy Act: Notice of Change in Schedule for Issuing Draft Environmental Impact Statement.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to postpone completion of a Draft EIS regarding selection of an appropriate remedial action to stabilize or control mill tailings derived from the inactive uranium mill near Rifle, Colorado.

The original schedule for compliance with the National Environmental Policy Act (NEPA) provided for public review of the Draft EIS in late 1983. The new schedule postpones further work on the Draft EIS until January 1985 with public review intended to take place in the Spring of 1985. Remedial action is still scheduled to begin in the Spring of 1987.

On completion of the Draft EIS, its availability will be announced in the Federal Register and local news media, and comments will be solicited. Comments on the Draft EIS will be considered in preparing the Final EIS.

ADDRESS: General information on the process followed by the DOE in preparing environmental impact statements may be obtained from the Office of Environmental Compliance, Office of the Assistant Secretary for Environmental Protection, Safety and Emergency Preparedness, U.S. Department of Energy, Attn: Mr. Steven R. Woodbury, Room 4G–064, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–4510. Additional information may be obtained from the Uranium Mill Tailings Remedial Action Project, U.S. Department of Energy, Albuquerque Opeations Office, 5301 Central Avenue, NE., Suite 1700, Albuquerque, New Mexico 87108; Attn: Mr. James A. Morley, Project Manager.

SUPPLEMENTARY INFORMATION: The DOE published a Notice of Intent (48 FR 2819) on January 21, 1983, regarding the preparation of an EIS and conduct of public scoping meetings for remedial actions to be performed at the Rifle inactive uranium mill site. Scoping meetings were held in Rifle on February 7 and 8, 1983..

In the Notice of Intent, the DOE stated that "After the completion of a Final EIS, the plan for remedial action on the Rifle tailings will be selected, probably in 1984." The DOE has adjusted the schedule for the Rifle EIS to coincide with changes made in an EIS being proposed for remedial action on the tailings pile in Grand Junction, Colorado, as well as to allow for additional data collection and engineering studies. The additional time is also necessary to fully evalute the remedial action options for the tailings pile and ensure their compliance with standards for the protection of public health, safety, and environment promulgated by the Environmental Protection Agency (40 CFR Part 192).

Members of the public may inspect documents, including the EIS Implementation Plan, to be used in preparing the Draft EIS at the following locations:

Freedom of Information Reading Room, Room 1E–190, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.
Bendix Field Engineering Corporation Library, P.O. Box 2557, Grand Junction, CO 81502.
Mesa County Library, 530 Grand Junction Avenue, Grand Junction, CO 81501.
Learning Resource Center, Mesa College, P.O. Box 2647, Grand Junction, CO 81502.
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Dated at Washington, D.C., this 3rd day of January 1984, for the United States Department of Energy.

William A. Vaughan,

Assistant Secretary, Environmental Protection Safety, and Emergency Preparedness.

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Bonneville Power Administration

Record of Decision for Bonneville Power Administration's Transmission Facilities Vegetation Management Program

AGENCIES: Lead Agency—Bonneville Power Administration (BPA), DOE; Cooperating Agencies—U.S. Environmental Protection Agency; Forest Service (FS), U.S. Department of Agriculture; Bureau of Land Management (BLM), U.S. Department of the Interior; and Fish and Wildlife Service (FWS), U.S. Department of the Interior.

ACTION: Record of Decision (ROD).

SUMMARY: Bonneville Power Administration (BPA) has selected a vegetation management program for controlling vegetation at its transmission facilities. The program selected was identified as Alternative 10 in the Final Environmental Impact Statement (EIS) on BPA's Transmission Facilities Vegetation Management Program (DOE/

EIS–0097–F). The program will use manual, spot chemical, broadcast chemical, and biological methods to manage vegetation. Other methods may be employed on an experimental basis, or where constraints imposed by entities other than BPA place limits upon or foreclose reliance upon the methods included in the program.

The selected program was identified as BPA's preferred alternative in the EIS. Based upon the analysis in the EIS, the selected program was also determined to be the environmentally preferred alternative. The EIS identified a total of 55 separate mitigation measures. With the exception of mitigation measures No. 17, No. 18, No. 41, and No. 42, all of the mitigation measures described in the EIS are incorporated into the selected program.

Selection of treatment methods to be used in specific management situations is based on consideration of the social, ecological, and economic consequences of using the various methods included in the program. Treatment selection guidelines that will be used under the selected program are identified and discussed in Chapter 5 of the EIS. Under these guidelines, manual methods are to be used primarily on low-density right-of-way brush on accessible sites and where treatment of individual plants is appropriate (e.g., visual screens and riparian areas). Spot chemical methods are to be used primarily in similar situations where sprouting plant species are a problem but with precautions (e.g., buffer zones) to protect water quality. Broadcast chemical methods will be used in inaccessible sites, on high-density bursh, and where little hazard to public health, water quality, or adjacent land use is involved. Current experimental studies with, and limited operational use of, biological methods will continue. A series of tables summarizing, generally, BPA's treatment selections for specific management situations (e.g., transmission line rights-of-way and substations) are being distributed to interested parties along with the ROD and are available from the address listed at the end of the document.

SUPPLEMENTARY INFORMATION:

Background

BPA operates and maintains a regional electrical transmission system in the Pacific Northwest. This system encompasses approximately 13,000 miles of transmission lines and 357 substations plus miscellaneous other facilities in the States of Oregon, Washington, and Idaho, and in parts of Montana, Wyoming, California, and Utah. The underlying need for a vegetation management program is to ensure transmission system reliability.

Tall-growing plants must be prevented from growing into transmission lines. Access roads used for inspection and maintenance of transmission lines must be kept clear of obstructing vegetation. Within substations, switchyards, and microwave stations, all vegetation must be removed to prevent fire and safety hazards. Also, where BPA's actions have caused and/or contributed to noxious weed infestation, BPA cooperates with landowners and local weed control districts to help eradicate or control noxious weeds.

Alternatives Considered

In making a decision with respect to its future vegetation management program, BPA evaluated a number of alternative methods of vegetation control (see Chapter 3 of the EIS). The methods of control that were evaluated fall into four broad categories: (1) Chemical methods of control (including both spot herbicide applications and broadcast herbicide applications); (2) manual methods (cutting, girdling, topping, pruning, handpulling, and hoeing); (3) mechanical methods (scarification, chopping, cutting, or mowing); (4) biological methods (controlling weeds by introduced insects, establishment of stable low-growing species, prescribed grazing, and wildlife management). Multiple use arrangements with landowners were also evaluated along with the other methods of vegetation control.

Extending the evaluation of specific methods of vegetation control, BPA also evaluated alternative vegetation management programs (see Chapter 4 of the EIS). A vegetation management program may rely on just one method of control or on a combination of methods. The alternative vegetation management programs evaluated in the EIS were as follows:

Alternative 1—No Action
Alternative 2—Manual Only
Alternative 3—Spot Chemical Only
Alternative 4—Broadcast Chemical Only
Alternative 5—Manual and Mechanical Methods
Alternative 6—Spot Chemical and Broadcast Chemical Methods
Alternative 7—Biological, Manual, and Mechanical Methods
Alternative 8—Biological, Manual, Mechanical, and Spot Chemical Methods
Alternative 9—Biological, Manual, Mechanical, and Broadcast Chemical Methods
Alternative 10—Biological, Manual, Spot Chemical, and Broadcast Chemical Methods
Alternative 11—Biological, Manual, and Spot Chemical Methods

Evaluation of Alternatives

These 11 vegetation management program alternatives were evaluated and compared to each other using 14 evaluation criteria. The sources of these evaluation criteria were: (1) comments and suggestions obtained during the EIS scoping process; (2) public and agency comments received on previous BPA environmental assessments (EA's) and EIS's covering vegetation management; and (3) the knowledge and experience of BPA's own vegetation management personnel. The 14 evaluation criteria were organized as follows:

Social Criteria

1. Public health.
2. Worker safety.
3. Land use.
4. Visual, historical, and cultural resources.
5. Public acceptability.

Biophysical Criteria

6. Water quality and fisheries.
7. Plants and animals.
8. Soil productivity.

Economic Criteria

9. Treatment cost.
10. Employment.
11. Energy efficiency.

Management Criteria

12. Legal criteria.
13. Treatment effectiveness.
14. Operational flexibility.

Eight of these 14 criteria were given high importance ratings based on the above sources (public health, worker safety, public acceptability, water quality and fisheries, treatment cost, legal compliance, treatment effectiveness, and operation flexibility).

Each of the 11 program alternatives was evaluated against each of the evaluation criteria, and a determination made whether it would have: (1) Major beneficial impact; (2) beneficial impact; (3) no or negligible impact; (4) adverse impact; (5) major adverse impact; or (6) not applicable with respect to each criteria. In comparing and ranking the alternative programs, subtotals were obtained for just the environmental criteria (social criteria plus biophysical criteria) in addition to grand totals for all criteria (including economic and management criteria).

Among the 11 program alternatives, five alternatives were ranked favorably:

(1) Exclusive use of manual methods (Alternative 2), (2) exclusive use of spot chemical methods (Alternative 3), (3) use of spot chemical and broadcast chemical methods (Alternative 6), (4) use of manual, biological, spot chemical, and broadcast chemical methods (Alternative 10), and (5) use of biological, manual, and spot chemical methods (Alternative 11). Based upon paired comparisons among these five favorably ranked alternatives, the selected program (Alternative 10) ranks as equal or better on all high importance criteria. Overall, Alternative 10 rated highest with respect to environmental criteria. Alternative 10 also rated highest with respect to economic and management criteria. Alternative 10, the selected program, is therefore the environmentally preferable alternative, and it is also preferable for technical and economic reasons.

Means to Avoid or Minimize Environmental Impact

The selected program (Alternative 10 in the EIS) includes the use of spot chemical, broadcast chemical, manual, and biological methods. Selection of treatment methods for particular sites is based upon social and ecological considerations as well as economic cost and management effectiveness. Specific management prescription selections are based upon field inspections and various technical aids such as oblique aerial photography, plan and profile drawings, and a computerized inventory of BPA's rights-of-way, and they are made in accordance with treatment selection guidelines (see Chapter 5 of the EIS). The selected program includes a number of mitigation measures, management requirements, and guidelines intended to further reduce or minimize adverse environmental impacts. Manual methods are to be used primarily on low-density right-of-way brush at accessible locations and in special situations where treatment of individual plants is appropriate such as adjacent to streams and at visual screens. Spot chemical methods are to be used in similar situations where resprouting plant species are a problem but with precautions to protect water quality. Broadcast chemical methods are to be used in inaccessible sites, on high-density brush, and where there is little hazard to public health, water quality, and adjacent land use. Biological methods are to be operational in controlling noxious weeds in certain situations, and are also to be conducted experimentally elsewhere.

The mitigation measures listed below are those discussed and evaluated in the EIS. They are numbered consecutively and organized according to which particular method(s) of vegetation control they apply. With the exception of mitigation measures No. 17, No. 18, No. 41, and No. 42, all of these measures are incorporated into the selected program.

Measures Relevant to All Methods of Control

1. Follow all applicable Federal and State laws and regulations in conducting vegetation management treatments.

2. Allow vegetation that does not conflict with BPA's underlying need for vegetation management to grow on rights-of-way; for example, allow tall-growing plants in canyons where no possibility exists for violation of transmission line clearance criteria.

3. Select treatments for specific sites based on considerations of sociological, economic, and ecological consequences; that is, use an Integrated Pest Management (IPM) decisionmaking process; high importance concerns are public health, worker safety, water quality, and treatment cost; also important are adjacent land uses and wildlife habitat.

4. Coordinate vegetation control activities with managers and administrators of parks, recreation areas, scenic areas, historical sites, and other high public use areas in proximity to transmission facilities.

5. Establish Memoranda of Agreement with land management agencies whose lands are crossed by transmission facilities to cooperatively develop vegetation management plans.

6. Establish agreement with landowners to facilitate compatibility of vegetation management activities with landowner objectives; for example, where appropriate, agreements may specify exclusion of all herbicides, type or application technique of herbicide treatments, type of other control methods, timing of control treatments, or notification before herbicide applications; agreements may be formal (see Item 7, below) or informal.

7. Establish multiple-use agreements with landowners (e.g., "tree and brush control agreements," and "Christmas tree agreements") to formally designate landowners responsible for right-of-way vegetation management subject to BPA clearance and access criteria.

8. Maintain right-of-way vegetation at highway crossings and recreation sites (e.g., stream crossings) with appearance as high-priority objective; maintain vegetation screens at such critical viewpoints, and use topping or pruning of trees as appropriate.

9. Cooperate with adjoining landowners and local Weed Control Districts to control and/or eradicate noxious weed infestations on right-of-way in accordance with landowner agreements and Federal, State, and local laws.

10. Prepare Daily Brush and Weed Control Reports (BPA Form No. 397) for all vegetation management projects to record all data necessary to document control treatments (e.g., treatment site location; control method; herbicide formulation, application rate, and application technique; weather conditions; and unusual conditions).

11. Strictly observe all safety instructions in the BPA Transmission Line Maintenance Standard; conduct worker safety instruction for BPA workers (especially for use of manual methods).

12. Provide opportuntiy for public review of BPA's transmission facilities vegetation management program by means of public and agency review of this program EIS as well as subsequent environmental documents tiered to the program EIS. The public involvement effort includes an extensive direct mailing of the environmental documents, use of the news media to announce the availability of the program EIS, and the establishment of public information centers during the review period for the program EIS.

13. Continue research and field tests of new control methods and new herbicides; document study design, before and after site evaluations, and effectiveness of vegetation management; maintain documentation in a form suitable for public review. In particular, document frequency of treatment required for each method or herbicide tested.

14. Continue periodic contact with U.S. Fish and Wildlife Service Endangered Species Offices to monitor additions to Threatened/Endangered Species lists and new locations or habitats of previously listed species that may be affected by vegetation management activities.

15. Use properly sized equipment and motor vehicles and keep them in proper adjustment to minimize energy requirements.

16. Improvement management guidelines for selection of treatment methods for each management unit; document guidelines in instructional memoranda between Branch of Transmission Line Maintenance and Area Operation and Maintenance Managers; generically indicate those situations where each treatment method, herbicide application rate, and herbicide application technique is either appropriate, not appropriate, or

appropriate given adherence to special circumstances or precautions.

17. Document rationale for selection of treatment method for each management unit.

18. Investigate feasibility of establishing a cost-sharing program whereby landowners are reimbursed for maintaining right-of-way vegetation on their lands, in order to stimulate greater participation of landowners in multiple use agreements.

19. Cooperate with State and local land use planning entities and explore the possibility of determining generic compatibility of routine, ongoing vegetation management activities with land-use plans, policies, and controls (e.g., coastal zone management).

20. Encode information regarding locations of threatened and endangered species (particular plants) into ROWDATA inventory system and other appropriate planning tools if such species become known on BPA rights-of-way; encode information regarding locations of known cultural resource sites into ROWDATA system to insure protection during vegetation management activities.

21. Follow all applicable Federal and State laws including EPA and State-approved herbicide labels; for example, follow mixing instructions on herbicide labels carefully.

22. Allow herbicides to be applied only by licensed applicators or under the *direct supervision* of licensed applicators as required by State law.

23. Mix all herbicides on right-of-way, within substations, or at other acceptable sites to minimize risks of inadvertent spills.

24. Strictly observe buffer zones at all bodies of water (e.g., streams, ponds, wetlands, springs, and seeps) as follows:

Method of application	Buffer zone to water body* (minimum horizontal distance in feet)
Spot chemical:	
Basal-stem spray	10
Cut-stump treatment	10
Frill or injection	10
Pellets or granules	10
Foliage spray	50
Broadcast chemical:	
Ground-based foliage spray	50
Aerial foliage spray	100

*Except for herbicide formulations such as Ammonium Sulfamate which is permissible up to the water's edge.

25. Carefully monitor weather conditions (i.e., wind, precipitation, temperature, and humidity) before and during herbicides applications to prevent drift, volatilization, leaching, or surface runoff of applied herbicides.

26. Monitor herbicide residues in soil and water when requested appropriately by land management agencies, landowners, and the BPA Areas, to identify patterns of herbicides' persistence and mobility at sensitive sites.

27. Strictly observe all Maintenance Standard and label instructions for handling, storage, and disposal of herbicides and herbicide containers.

28. Strictly observe Maintenance Standard instructions for handling of "minor" spills and "major" spills; for major spills, follow specified procedures for cleanup, disposal, notification of landowner and State and Federal agencies, and certification of compliance from agencies.

29. Carefully consider land uses adjacent to treatment sites (e.g., commercial crops, and recreation grounds) when prescribing and implementing chemical treatments.

30. Inspect right-of-way prior to herbicde application for presence of domestic animals if herbicide label restricts grazing. If such herbicides are planned for use, notify landowners prior to application to allow confinement of livestock away from right-of-way.

31. Do not use oil carriers in foliar herbicide applications to avoid oil hazards to wildlife (small birds and mammals, in particular) and to reduce energy requirements of chemical methods.

32. Conduct herbicide applicator training to insure that proper application rates and herbicide placement are used; inspect herbicide operations to insure proper implementation.

33. Monitor the fate of herbicides in groundwater and surface water at substations where herbicides are used at high application rates. Also, several of the herbicides used at substations for total weed control are persistent in soil and mobile in waters; therefore, where substations are located over water supply aquifers (e.g., Spokane Valley-Rathdrum Prairie Sole Source Aquifer), depths to the ground-water table should be established and soil permeability analyzed in order to estimate likelihood of groundwater contamination.

Measures Relevant to Broadcast Chemical Methods of Control

34. Strictly observe all requirements and measures to minimize drift and volatilization from broadcast applications (both aerial and ground-based), including monitoring of weather conditions (wind, temperature, humidity, and likelihood of precipitation) and use of drift control measures.

35. Inspect aerial applicators and applications to insure BPA's spray delivery specifications are satisfied by contractors.

36. Inspect right-of-way immediately prior to broadcast applications (especially aerial) to disclose presence of people (e.g., off road vehicle operators hunters, hikers, berry pickers, and woodworkers).

37. Observe at least a 10-foot buffer zone beteen the treated vegetation under the line receiving aerial broadcast applications and the right-of-way edge to minimize impacts on off right-of-way vegetation.

38. Avoid broadcast applications adjacent to susceptible crops or ornamental plantings where any likelihood of damage exists for nontarget vegetation.

39. Avoid use of broadcast applications in high-sensitivity landscapee where temporary brown-out of vegetation is unacceptable.

40. Restrict use of aerial broadcast chemical methods primarily to remote areas with limited access, where no possibility of water supply contamination exists, and where temporary vegetation brown-out is acceptable.

41. Flag edges of stream buffer zones to insure that helicopter operators recognize their presence during aerial applications; monitor a sample (e.g., 10 percent) of stream buffer zone edges using spray deposit paper to evaluate observance of edges by aerial applicators.

42. To insure no aerial application within 100-foot stream buffer zone, require shutoff of spray delivery system 150 feet from stream (spray delivery specifications allow 50 feet for system to achieve dripless shutoff).

43. Use broadcast chemical methods primarily on high density, uniform stands of target species in order to minimize energy requirements per target stem treated, in order to avoid treatment of nontarget plants, and in order to diversify wildlife habitat conditions.

44. Eliminate use of 2,4-D ester formulations where any danger of contaminating water bodies exists, due to toxic effects on aquatic organisms.

Measures Relevant to Spot Chemical Methods

45. Avoid application of granular or pelletized herbicides to active or dormant (fallow) cultivated ground.

46. Avoid soil surface applications of herbicides where water table is high, where leaching or surface runoff is possible, or when ground is frozen.

47. Use primarily on accessible, low-density stands or target species in order

to maximize energy efficiency and worker safety.

48. In riparian areas, retain adequate shading of streams to prevent elevated stream temperatures.

49. Where spot chemical methods are used to control high-density target vegetation (e.g., in stream or cropland buffer zones), implement treatment in a way that enhances wildlife habitat diversity.

Measures Relevant to Manual Methods of Control

50. When cutting shrubs, cut short, flat stumps to minimize worker hazards of tripping and puncture wounds.

51. Use spark arresters on equipment and have fire suppression equipment accessible during all cutting treatments.

52. Chip or lop-and-scatter debris from cutting treatments to prevent fire hazard and to improve visual quality.

53. Remove all felled trees and limbs from streams or watercourses.

54. In riparian areas, retain adequate shading of streams to prevent elevated stream temperatures.

55. Implement manual treatments in a way that enhances wildlife habitat diversity (e.g., use cut-stump herbicide treatments to prevent dense sprout stands from forming).

Mitigation Measures Not Adopted

Mitigation Measure No. 17 would have BPA document the rationale for selection of specific treatment methods for each management unit. The purpose of this measure would be to provide evidence in the treatment record explaining what factors led BPA to select a particular method for a specific site. BPA would be able to explicitly show on the record that it had considered relevant factors in choosing a given treatment method at a particular site.

BPA has not adopted this measure because it would be an excessively burdensome exercise in paperwork and recordkeeping and of questionable utility. Approximately 84,000 acres of BPA rights-of-way, organized into some 42,000 management units (approximately 2 acres each on the average) require periodic vegetation management. In any given year several thousand management units require decisions regarding selection of treatment methods. To explicitly set down in writing the rationale for each of these decisions would not only generate excessive paperwork, but it would be of questionable value, as BPA already documents vegetation management activities and treatment implementation by other means. The ROWDATA computerized inventory maintains a record for each right-of-way management unit. Included in this data base is detailed information on date and method of last treatment, type and application rate of herbicide (if used), and the management unit's classification in terms of land use. Critical and sensitive areas are also identified in the ROWDATA records. As treatment selections are actually implemented, Daily Brush and Weed Control Reports are completed by BPA vegetation management personnel. These reports document how and under what conditions a treatment was implemented. There is already in place, therefore, substantial documentation of treatment selections and their implementation. This documentation will be continued under the selected program.

Mitigation Measure No. 18 would have BPA investigate the feasibility of establishing cost-sharing programs in which landowners are reimbursed for maintaining right-of-way vegetation on their land. BPA has investigated what other utilities have experienced in trying to establish cost-sharing programs (see Chapter 3 of the EIS). The cases investigated displayed low interest on the part of landowners and a high default rate for such established agreements. Where there is a default, the utility incurs both the administrative costs of the agreement as well as the direct costs of treating the vegetation. Because of the disappointing experiences of others in the area of cost sharing, BPA does not intend to include this as a normal ongoing part of its selected program.

Nevertheless, it is BPA policy to promote multiple use on its rights-of-way. Consistent with this policy, private landowners may enter into "Tree and Brush Control Agreements" with BPA. Under these agreements, landowners can assume responsibility for managing right-of-way vegetation on their property. While the agreement is in force BPA agrees to relinquish all vegetation control rights on the property. However, BPA does not provide cost reimbursements to landowners under these agreements.

Mitigation Measure No. 41 applies to aerial broadcast applications. This measure would require that the edges of stream buffer zones be flagged to insure that helicopter operators recognize their presence during aerial applications. It would also require that BPA monitor (through the use of spray deposit paper) the observance of the edges by aerial applicators. This measure could, conceivably, reduce the potential for inadvertent direct contact with smaller bodies of water. Nevertheless, BPA does not intend to adopt this mitigation measure because current practices already provide for adequate protection of water quality.

The purpose of having a 100-foot buffer zone is to provide for an adequate margin of safety for the surface water *even if* the shutoff of the aerial application does not occur precisely at the buffer zone edge. Areas to be sprayed are inspected beforehand and aerial operators are carefully briefed before making their applications. Furthermore, BPA inspectors are present on the ground to monitor compliance with contract specifications (including buffer zones). Radio contact between the ground and the aerial applicator enables the inspector to order a shut off at any time. While these practices are not fail-safe, they do (together with other BPA practices aimed at protecting water quality) provide an adequate margin of safety.

Even under a worst-case condition (direct aerial application to the water surface at the highest application rate) the hazard presented to the aquatic environment would be low for all aerially applied herbicides except for Ester formulations of 2,4-D. Ester formulations of 2,4-D are the subject of mitigation measure No. 44 which BPA has chosen to adopt in this Record of Decision.

Mitigation Measure No. 42 also applies to aerial broadcast applications. To assure that no aerial application takes place within 100 feet of a stream, the spray delivery system would be required to shut off at a distance of 150 feet from the stream. While acknowledging that this measure would create an additional margin of safety, BPA's current practices already insure adequate protection of water quality. Accordingly, BPA does not intend to adopt this mitigation measure.

The buffer zone observed by BPA for aerial broadcast applications is 100 feet. Whether conditions are closely monitored by BPA inspectors on-site at the time of the application to minimize drift, volitilization, or surface runoff. Prior to conducting aerial applications, aerial spray contractors are required to fulfill BPA's spray delivery specifications which are quite stringent (see Chapter 3 of the EIS).

BPA has verified the effectiveness of these practices through monitoring herbicide residues in streams near treated right-of-way. Monitoring over the last 10 years has revealed that in cases where herbicides were detected in streams, contamination was highly localized, occurred at very low levels, and quickly decreased. These results

verify the effectiveness of BPA's existing practices.

Monitoring and Enforcement: The mitigation measures identified in the final EIS and adopted in this Record of Decision will be incorporated into BPA's Transmission Line Right-of-Way Maintenance Standard. This standard serves as a basic guide to BPA personnel responsible for controlling vegetation. All treatment selections will be made in accordance with the Right-of-Way Maintenance Standard.

Vegetation management work to be performed by BPA's own Force Account personnel are described in detailed Working Instructions. The BPA foreman overseeing the Force Account work is responsible for seeing that the Working Instructions are adhered to, and he/she signs them off upon their successful completion. Vegetation management work to be performed by contract is described in detail in the Work Statement, which is incorporated into the contract itself. An inspector is assigned to the contract by the appropriate BPA Area, and it is the inspector's responsibility to oversee the performance of the contract and to see to it that the treatment selections specified in the Work Statement are adhered to. Daily reports are filled out by the inspectors who bear witness to contract compliance.

Intergration With Other Requirements: BPA has evaluated various environmental statutes and regulations applicable to BPA's programs and activities (see Chapter 8 of the EIS). For each of these environmental requirements, a determination was made regarding its relevance to transmission facility vegetation management. For each of the requirements determined to be relevant, an explanation is provided in the EIS regarding how compliance is or will be assured.

Some of the relevant environmental requirements are satisfactorily complied with at the program level (the level of analysis contained in the EIS). Other relevant environmental requirements will be satisfactorily complied with at the project level. Still other relevant environmental requirements will be satisfied at both the program level and the project level. For example, in some cases, an environmental requirement will be satisfied completely by incorporating a particular constraint or mitigation measure as a standard practice in the systemwide vegetation management program. In other cases, complete compliance will only be partially provided by incorporation of a mitigation measure in the systemwide program; subsequent selection and implementation of site-specific measures in carrying out individual vegetation management projects will be needed to completely satisfy these requirements.

The following summarizes the findings made by BPA with resect to the various environmental requirements determined to be relevant to transmission facilities vegetation management:

Relevant environmental requirement	Levels for compliance with requirements		Means for compliance
	Programmatic	Project-level	
Environmental policy	Partial	Complete	Program EIS together with project-specific environmental analyses "tiered" to generic programmatic EIS.
Endangered/threatened species and critical habitat.	Complete (as of 05-15-83).		Project-specific environmental analysis verify no jeopardy to listed species or critical habitats or provide mitigation.
Heritage conservation	Partial	Complete	Determination that vegetation management at existing facilities do not have an effect upon sites, protection of newly discovered sites at BPA facilities, SHPO consultation with respect to BPA's determinations.
Coastal management program consistency.	Complete	do	"General consistency determination" in EIS.
Wetlands	Complete	do	Incorporation of measures for wetland protection from herbicide contamination in program assures no unusual circumstances in routine maintenance program.
Farmlands	Partial	do	Incorporation of measures to protect farmland productivity in program, implementation at project level.
Recreation resources	do	do	Maintenance and enhancement of visual quality at or near recreational resources in cooperation with land management agencies.
Permit for right-of-way on public land (indirectly relevant).	do	do	Cooperative development of right-of-way management plans pursuant to Memorandum of Understanding with USFS and BLM.
Pollution control at Federal facilities			
Clean Water Act	do	do	Incorporation of measures to protect water quality in program, implementation of measures at project level.
Resource Conservation and Recovery Act.	do	do	Incorpration of waste disposal procedures in program (Right-of-Way Maintenance Standards) implementation at project level.
Safe Drinking Water Act	do	do	Incorporation of measures to protect water quality in program, implementation of measures at project level.
Noise Control Act	do	do	Compliance with State and local noise control standards where they exist.
Federal Insecticide, Fungicide, and Rodenticide Act.	do	do	Incorporation of herbicide-use constraints into program (right-of-way maintenance standards); implementation during field operations.
Energy conservation at Federal facilities.	Complete		BPA's "General Operations Plan" for energy conservation covers vehicles and equipment used in vegetation management.

In regard to endangered and threatened species and critical habitat, BPA, after examining current literature and informally consulting with the Endangered Species Offices of the U.S. Fish and Wildlife Service (USFWS), reached the conclusion that its proposed vegetation management program would not jeopardize the continued existence of any threatened or endangered species, or adversely modify their critical habitats (see Chapter 8, Section 2, of the EIS). Copies of this finding were provided to appropriate offices of USFWS. The U.S. Department of the Interior, speaking in behalf of USFWS, expressed basic agreement with BPA's finding, indicating also that they saw no immediate need for BPA to initiate formal consultation with USFWS.

In regard to heritage conservation, BPA made a determination that vegetation management employing the use of spot chemical, broadcast chemical, manual, and biological methods at existing transmission facilities does not constitute an "effect" upon National Register sites (see Chapter 8, Section 4, of the EIS). BPA is continuing to consult with the various State Historic Preservation Officers (SHPO's). Additional consultation will be initiated during the public and agency review of the forthcoming environmental documents that will be tiered to the program EIS.

In regard to State, area-wide and local plan and program consistency, BPA made a determination that the requirements of the Intergovernmental Cooperation Act and OMB Circular A-95 are not relevant to BPA's proposed vegetation management program (see Chapter 8, Section 5, of the EIS). Nevertheless, BPA relied upon the clearinghouses established under A-95 in circulating its draft program EIS to State, regional, and local agencies. Copies of the final EIS, as well as this ROD, have been sent to the same

agencies, organizations, and individuals who received the draft EIS.

In regard to coastal management program consistency, BPA concluded that its vegetation management program was consistent with the Washington State Coastal Zone Management Program and the Oregon State Coastal Zone Management Program (see Chapter 8, Section 6, of the EIS). This was in the form of General Consistency Determinations for both State programs as provided for in 15 CFR 930.39. The general consistency determinations were incorporated into the draft EIS (which was distributed in September 1982), and provided to the Department of Land Conservation and Development (Oregon) and the Department of Ecology (Washington). Neither of these States disagreed with BPA's general consistency determination. In the case of Oregon, written concurrence with BPA's finding was obtained.

In regard to floodplains, BPA concluded that the procedures for floodplain review set forth in Executive Order (EO) 11988, as well as the Department of Energy's (DOE's) Regulations at 10 CFR Part 1022, are not relevant to BPA's vegetation management program (see Chapter 8, Section 7, of the EIS).

In regard to wetlands, BPA concluded that EO 11990 (Wetland Protection) and DOE's implementing regulations for wetland protection were relevant to transmission facilities vegetation management (see Chapter 8, Section 8, of the EIS). This conclusion was reached because the use of herbicides on transmission line rights-of-way through wetlands could be considered to be an unusual circumstance with potential for adverse impact. However, because of the mitigation measures incorporated into BPA's proposed vegetation management program (e.g., stream buffer zones, and drift control measures) and the low toxicities of herbicides used by BPA (see Chapter 7 of the EIS, *Water Quality),* adverse impacts to wetlands are highly unlikely. Accordingly, no unusual circumstances were found to exist and a wetlands assessment was not deemed necessary for BPA's program.

In regard to farmlands, BPA concluded that its vegetation management program does not result in the conversion of farmlands to other uses (see Chapter 8, Section 9, of the EIS). Nevertheless, it was acknowledged that farmland protection requirements are relevant because vegetation management may potentially impact agricultural productivity. Such potential impacts are effectively minimized because: (1) vegetation control is not normally required in cultivated areas, (2) drift control and other mitigation measures minimize the possibility of impacts to nontarget vegetation, and (3) BPA's policy is to cooperate with others in noxious weed control in agricultural areas. Additionally, the herbicides used by BPA do not persist long enough to pose any problem of reduced soil productivity.

FOR FURTHER INFORMATION CONTACT: Anthony R. Morrell, Environmental Manager, Bonneville Power Administration, P.O. Box 3621—SJ, Portland, Oregon 97208; telephone (503) 230-5136. Copies of this Record of Decision are being sent to agencies, organizations, and individuals who were sent copies of the EIS.

Issued in Portland, Oregon, December 16, 1983.

Peter T. Johnson,

Administrator.

[FR Doc. 84-631 Filed 1-10-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and time: Monday, February 6, 1984, 9:00am—6:00pm, Tuesday, February 7, 1984, 9:00am—5:00pm.

Place: U.S. Department of Energy, Room A-410, 19901 Germantown Road, Germantown, MD 20874.

Contact: Dr. P. K. Williams, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, Washington, D.C. 20545, Telephone: 301/353-4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Monday, February 6, 1984

—Discussion of FY 1984 Appropriation Budgets and FY 1985 Presidential Reguest Budgets for NSF Elementary Particle Physics and DOE High Energy Physics programs.
—Discussion of DOE actions and plans on advanced accelerator R&D.
—Presentation and discussion of results of SLC R&D tests and construction status.
—Discussion of Capital Equipment needs in the DOE High Energy Physics and NSF Elementary Particle Physics programs.
—Discussion of issues on the boundary between High Energy Physics and Nuclear Physics.
—Public Comment (10 minute rule).

Tuesday, February 7, 1984

—Presentation and discussion on review of non-accelerator experiments: high energy gamma ray astronomy; searches for magnetic monopoles.
—Further discussion of budgets and equipment problems.
—Public comment (10 minute rule).

Public participation: The meeting is open to the public. The Chairperson of the panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Panel will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on January 5, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84-630 Filed 1-10-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PF-359 PH-FRL 2505-1]

Certain Companies; Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment of tolerances for residues of certain pesticide chemicals in or on certain commodities.

ADDRESS: By mail, written comments may be sent to the following address,

attention Product Manager (PM) named in each petition:

Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In Person, deliver comments to: Rm. 236, CM No. 2, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written comments must be identified by the document control number [PF–359]. All written comments filed in reponse to this notice will be available for public inspection in the Program Management and Support Division office at the address above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: The Product Manager at the telephone and room number given in each petition.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received the following pesticide petitions relating to the establishment of tolerances for residues of certain pesticide chemicals in or on certain commmodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

Initial Filings

1. *PP 4F2992.* E.I. du Pont de Nemours & Co., Wilmington, DE 19898. Proposes amending 40 CFR 180.303 by establishing tolerances for the insecticide oxamyl (methyl *N',N'*-dimethyl-*N*-[(methylcarbamoyl)oxy]-1-thiooxamimidate) in or on the commodity cabbage at 2 parts per million (ppm). The proposed analytical method for determining residues is gas chromatography with sulfur sensitive flame photometric detector. (Jay Ellenberger, PM–12, CM#2, Rm. 205 (703–557–2386))

2. *PP 4F2999.* Dow Chemical Co., P.O. Box 1706, Midland, MI 48640. Proposes amending 40 CFR 180.342 by establishing tolerances for the combined residues of the insecticide chlorpyrifos, *O, O*-diethyl *O*-(3,5,6-trichloro-2f-pyridyl) phosphorothioate and its metabolite 3,5,6-trichloro-2-pyridinol in or on the commodities tree nuts as follows:

Commodities	Parts per million (ppm)
Almonds	0.2
Beech nut	.2
Brazil nut	.2
Butternut	.2
Cashew	.2
Chestnut	.2
Chinquapin	.2
Filbert	.2
Hickory	.2
Macadamia	.2
Pecan	.2
Walnuts (black and English)	.2

The proposed analytical method for determining residues is gas chromatography using a flame photometric detector. (Jay Ellenberger, PM–12, CM#2, Rm. 205, (703–557–2386)).

3. *PP 4F3000.* Ciba-Geigy Corp., Agricultural Division, P.O. Box 18300, Greensboro, NC 27419. Proposes amending 40 CFR 180.368 by establishing tolerances for the combined residues of the herbicide metolachlor [2-chloro-*N*-(2-ethyl-6-methyl-phenyl)-*N*-(2-methoxy-l-methylethyl) acetamide] and its metabolites determined as 2-[(2-ethyl-6-methylphenyl)-amino]-1-propanol and 2-[(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as parent metolachlor, in or on the commodity apples at 0.1 ppm. Proposed analytical method for determining residues is gas chromatography. (Richard Mountfort, PM–23, CM#2, Rm. 247, (703–557–1830).

4. *PP 4F3006.* Elanco Products Co., 740 South Alabama St., Indianapolis, IN 46285. Proposes amending 40 CFR 180. 416 by establishing tolerances for the herbicide ethalfluralin [*N*-ethyl-*N*-(2-methyl-2 propenyl)-2, 6-dinitro-4-(trifluoromethyl) benzenamine] in or on the commodity sunflowers at 0.05 ppm. The proposed analytical method for determining residues is electron capture gas liquid chromatography. (Richard Mountfort, PM–23, CM#2, Rm. 247, (703–557–1830).

5. *PP 4F2984.* Rhone-Poulenc, Inc., Agrochemical Division, P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852. Proposes amending 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for residues of the reported wetting and dispersing agents sopropher 3 D 33: alpha [phenyl, 2,4,6-tris (1 phenyl ethyl)] omega polyoxyethylene, mixture of phosphates and soprophor FL: Alpha [phenyl, 2,4,6-tris (1 phenyl ethyl)] omega polyoxyethylene, mixture of phosphates, triethanolamine salt in or on the commodity cotton. (Robert Taylor, PM–25, CM#2, Rm. 245, (703–557–1800).

6. *PP 4F2996.* American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540. Proposes amending 40 CFR 180.352 by establishing tolerances for the combined residues of the insecticide terbufos (S-[[(1,1-dimethylethyl)thio]methyl] *O,O* diethyl phosphorodithioate) and its phosphorylated (cholinesterase-inhibiting) metabolites phosphorothioic acid [*S*-(*t*-butyl-thio)methyl *O,O*-diethyl ester]; phosphorothioic acid [*S*-(*t*-butyl-sulfinyl)methyl *O,O*-diethyl ester]; phosphorothioc acid [*S*-(*t*-butyl-suflonyl) methyl *O,O*-diethyl ester]; phosphorothioic acid [*S*-(*t*-butyl-sulfinyl) methyl *O,O*-diethyl ester]; phosphorothioic acid [*S*-(*t*-butyl-suflonyl)methyl *O,O*-diethyl ester] in or on the commodities peanut nutmeat at 0.05 ppm, and peanut shells at 2.5 ppm. The proposed analytical method for determining residues is gas chromatographic procedure equipped with a flame photometric detector. (William Miller, PM–16, CM#2, Rm. 211, (703–557–2600).

7. *PP 4F3005.* Stauffer Chemical Co., 1200 S. 47 St., Richmond, CA 94804. Proposes amending 40 CFR 180.328 by establishing tolerances for the residues of the herbicide *N,N*-diethyl-2-(1-naphthalenyloxy)-propionamide in or on the commodities as follows:

Commodities	Parts per million (ppm)
Alfalfa	0.1 (N)
Alfalfa forage	.1 (N)
Alfalfa hay	1 (N)
Peanuts	.1 (N)
Peanuts forage	.1 (N)
Peanuts hay	1(N)
Peanuts hulls	.1 (N)
Pineapples	.1 (N)
Root and tuber vegetables	.1 (N)

The proposed anlytical method for determining residues is gas liquid chromatography using the Cowson conductivity detector specific for nitrogen. (Robert Taylor, PM–25, CM#2, Rm. 243, (703–557–1800).

(Sec. 408(d)(2) 68 Stat. 512, (21 U.S.C. 436a(d)(2)))

Dated: December 27, 1983.

Robert Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–634 Filed 1–10–84; 8:45 am]

BILLING CODE 6560–50–M

[PF–360 PH–FRL 2505–3]

Certain Companies; Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment of tolerances for residues of certain

pesticide chemicals in or on certain commodities.

ADDRESS: By mail submit written comments to:

Program Management and Support Division (TS–757C), Attn: Product Manager (PM) 21, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM#2, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Written comments must be identified by the document control number [PF–360]. All written comments filed in response to this notice will be available for public inspection in the Program Management and Support Division office at the address above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, PM–21, 557–1900.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Agency has received the following pesticide petitions relating to the establishment of certain pesticide chemicals in or on certain commodities in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each petition.

Initial Filings

1. *PP 4F2993.* BASF Wyandotte Corp., P.O. Box 181, Parsippany, NJ 07054. Proposes amending 40 CFR 180.380 by establishing tolerances for the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloro aniline moiety in or on the commodities tomatoes at 2.0 parts per million (ppm) and cucumbers at 1.0 ppm. The analytical method for determining residues is gas chromatography using an electron capture detector (Ni63).

2. *PP 4F3007.* Ciba Giegy Corp., P.O. Box 18300, Greensboro, NC 27419. Proposes amending 40 CFR Part 180 by establishing tolerances for the combined residues of the fungicide (1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites determined as 2,4–dichlorobenzonic acid and expressed as parent compound in or on the commodity pecans at 0.1 ppm. The proposed analytical method for determining residues is gas liquid chromatography.

(Sec. 408(d)(2) 68 Stat. 512, (21 U.S.C. 346a(d)(2)]).

Dated: December 27, 1983.

Robert V. Brown,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-653 Filed 1-10-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180633; PH-FRL 2505-4]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the States listed below. Also listed are three crisis exemptions initiated by two States and the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS).

DATES: See each specific and crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific and crisis exemption for the name of the contact person. The following information applies to all contact people: By mail:

Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.(703–557–1192)

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Florida Department of Agriculture and Consumer Services for the use of benomyl on potatoes to control *S. Sclerotiorum;* November 14, 1983 to April 30, 1984. EPA completed a rebuttable presumption against registration (RPAR) on this chemical; the final determination was published in the Federal Register of October 20, 1982 (47 FR 46747). (Jim Tompkins)

2. Minnesota Department of Agriculture for the use of metalaxyl on sunflower seeds to control downy mildew; December 8, 1983 to May 30, 1984. (Gene Asbury)

3. USDA/APHIS for the use of naled on inanimate objects to eradicate oriental fruit fly in California; December 3, 1983 to December 4, 1984. (Jack E. Housenger)

Crisis exemptions were initiated by the:

1. Arizona Commission of Agriculture and Horticulture on November 18, 1983, for the use of metalaxyl on cauliflower, broccoli, and collards to control downy mildew. Since it was anticipated that this program would be needed for more than 15 days, Arizona has requested a specific exemption to continue it. The need for this program is expected to last until December 1984. (Jim Tompkins)

2. Texas Department of Agriculture on October 4, 1983, for the use of permethrin on collards, mustard, and turnip greens to control the cabbage looper. Since it was anticipated that this program would be needed for more than 15 days, Texas has requested a specific exemption to continue it. The need for this program is expected to last until January 31, 1984. (Jack E. Housenger)

3. USDA/APHIS on October 31, 1983, for the use of malathion on fly sites to control the Mexican fruit fly. Since it was anticipated that this program would be needed for more than 15 days, USDA/APHIS has requested a quarantine exemption to continue it. The need for this program is expected to continue for one year. (Jack E. Housenger)

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: December 23, 1983.

James M. Conlon,

Director, Office of Pesticide Programs.

[FR Doc. 84-627 Filed 1-10-84; 8:45 am]

BILLING CODE 6560-50-M

[PP 3G2855/T435; PH-FRL 2505-2]

5-(4-Chlorophenyl)-2, 3-Diphenylthiophene Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the insecticide 5-(4-chlorophenyl)-2, 3-diphenylthiophene in or on certain raw agricultural commodities. These temporary tolerances were requested by Uniroyal Chemical Company.

DATE: These temporary tolerances expire December 9, 1984.

FOR FURTHER INFORMATION CONTACT: By mail:

Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–2386)

SUPPLEMENTARY INFORMATION: Uniroyal Chemical Company, 74 Amity Road, Bethany, CT 06525, has requested in pesticide petition PP 3G2855, the establishment of temporary tolerances

for residues of the insecticides 5-(4-chlorophenyl)-2, 3-diphenylthiophene, in or on the raw agricultural commodities grapefruit and oranges at 0.5 part per million (ppm); milk fat at 0.5 ppm (reflecting no more than 0.02 ppm in whole milk), meat and meat byproducts of cattle at 0.02 ppm, and fat of cattle at 0.1 ppm. A related food and feed additive regulation has established a tolerance for 5-(4-chlorophenyl)-2, 3-diphenylthiophene in citrus oil at 100 ppm and dried citrus pulp at 3.0 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permits 400–EUP–62 and 400–EUP–63 which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. Uniroyal Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire December 9, 1984. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerances. These tolerances may be revoked if the experimental use permits are revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516 (21 U.S.C. 346a(j)))

Dated: December 30, 1983.

Robert V. Brown,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–685 Filed 1–10–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Delegation of Authority to the Department of Health and Human Services

AGENCY: Federal Emergency Management Agency.

ACTION: Authority Delegation.

SUMMARY: This notice advises State and local governments and the public of a delegation of authority to the Secretary of Health and Human Services by the Federal Emergency Management Agency.

DATE: The delegation of authority is effective on January 11, 1984.

FOR FURTHER INFORMATION CONTACT: Agnes Mravcak, Emergency Management Specialist, Federal Emergency Management Agency, SLPS/DAP/IA, Rm 713, Washington, DC 20472, Phone: (202) 287–0555.

SUPPLEMENTARY INFORMATION: On March 7, 1975, the Secretary of Housing and Urban Development issued a delegation of authority to the Secretary of Health, Education and Welfare concerning the execution of the Crisis Counseling Assistance and Training program authorized by section 413 of the Disaster Relief Act of 1974, Pub. L. 93–288 (42 U.S.C. 5183). Administration of most disaster relief programs under the Act was then a function of the Department of Housing and Urban Development. Most of the programs under the Act have been transferred under Executive Order 12148, as amended, to the Director of the Federal Emergency Management Agency. The responsibility for the Crisis Counseling Assistance and Training program has been further redelegated to the Associate Director, State and Local Programs and Support (44 CFR 2.61), and to the FEMA Regional Directors (44 CFR 2.71).

Authority Delegation

Pursuant to the authority vested in me to exercise certain of the powers and authorities of the President with respect to Federal disaster assistance pursuant to Section 4–203 of Executive Order 12148, entitled "Federal Emergency Management," (44 FR 43239; July 20, 1979), I hereby delegate to the Secretary of Health and Human Services the following authority:

1. The authority to ascertain whether assistance under Section 413 of the Disaster Relief Act of 1974, as requested by a Governor of his/her representative, is warranted, and to recommend approval or disapproval of the request;

2. The authority to provide technical assistance to the FEMA Regional Directors and to States;

3. The authority to perform program oversight functions on behalf of FEMA;

4. The authority to recommend to FEMA approval or disapproval of program extensions and appeals;

5. The authority to fund States to provide the approved services, with funds provided by FEMA from the President's Disaster Fund;

6. The authority to provide direct services, with funds provided by FEMA from the President's Disaster Fund, when the State determines that it cannot perform the required services; and

7. The authority to review the program regulations, make recommendations for change, and participate in the revision process.

Dated: January 3, 1984.

Samuel W. Speck,

Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 84–632 Filed 1–10–84; 8:45 am]

BILLING CODE 6718–01–M

Delegation of Authority to the Department of Health and Human Services

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Withdrawal of Delegation of Authority.

SUMMARY: This notice advises State and local governments and the public of FEMA's withdrawal of a previous delegation of authority to the Secretary of Health, Education and Welfare (40 FR 10705; March 7, 1975).

DATE: The withdrawal is effective on January 11, 1984.

FOR FURTHER INFORMATION CONTACT: Agnes C. Mravcak, Office of Disaster Assistance Programs, State and Local Programs and Support, Federal Emergency Management Agency, 500 C Street, S.W., Washington, DC 20472 (202–287–0555).

SUPPLEMENTARY INFORMATION: On March 7, 1975, the Secretary of Housing and Urban Development issued a delegation of authority to the Secretary of Health, Education and Welfare concerning the execution of the Crisis Counseling Assistance and Training program authorized by section 413 of the Disaster Relief Act of 1974, Pub. L. 93–288 (42 U.S.C. 5183). Administration of most disaster relief programs under the Act was then a function of the Department of Housing and Urban Development. Most of the programs under the Act have been transferred under Executive Order 12148, as amended, to the Director of the Federal Emergency Management Agency. The responsibility for the Crisis Counseling Assistance and Training program has been further redelegated to the Associate Director, State and Local Programs and Support (44 CFR 2.61), and to the FEMA Regional Directors (44 CFR 2.71).

Authority Revocation

Pursuant to the authority vested in me to exercise certain of the powers and authorities of the President with respect to Federal disaster assistance pursuant to Section 4–203 of Executive Order 12148, entitled "Federal Emergency Management," (44 FR 43239; July 20, 1979), I hereby revoke the delegation to the Secretary of Health, Education and Welfare dated October 29, 1974 and effective March 7, 1975 (40 FR 10705) concerning section 413 of the Disaster Relief Act of 1974.

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84–699 Filed 1–10–84; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: T–3738–2.

Title: South Carolina State Ports Authority and Orient Overseas Container Line, Inc., Terminal Lease Agreement Modification.

Parties: South Carolina State Ports Authority (Authority) and Orient Overseas Container Line, Inc. (OOCL).

Synopsis: This amendment modifies the basic agreement which provides for the lease by the Authority to OOCL of premises at the Port's North Charleston terminal, Charleston, South Carolina. The amendment establishes a fixed expiration date, increases the size of the leased area, increases the monthly rental, increases the minimum annual tonnage guarantee and provided for an option for additional acreage.

Filing party: W. M. Lawrence, South Carolina State Ports Authority, P.O. Box 817, Charleston, South Carolina 29402.

Agreement No.: T–3740–2.

Title: Georgia Ports Authority and United States Lines, Inc. Amended Lease Agreement

Parties: Georgia Ports Authority (Port) and United States Lines, Inc. (USL)

Synopsis: Agreement No. T–3740–2 modifies the basic agreement between the parties for the Port's 5-year lease to USL of premises at berth No. 60, Garden City Terminal, Chatham County, Georgia. The purpose of the modification is to extend the term of the agreement to March 30, 1984, by which time a new agreement will be submitted to the Federal Maritime Commission for approval.

Filing party: Robert W. Goethe, Assistant Executive Director, Georgia Ports Authority, P.O. Box 2406, Savannah, Georgia 31402.

Agreement No. T–4159.

Title: San Francisco Port Commission and National Galleon Shipping Company, User Terminal Lease Agreement.

Parties: San Francisco Port Commission (Port) and National Galleon Shipping Company (Galleon).

Synopsis: Agreement No. T–4159 provides that the Port will grant to the User (Galleon) nonexclusive right to use the San Francisco Container Terminal facilities at Piers 94 and 96, for the handling of its vessels. Galleon agrees to use the premises as its regularly scheduled Northern California port of call. As consideration to Galleon for the use of the assigned premises as its regular port of call, it shall pay to the Port 60% of all revenue from dockage, wharfage, demurrage and storage earned in lieu of 100% payment. The provisions of the Port's Tariff No. 3–C shall apply to Galleon's use of the premises. The term of the agreement is for 5 years.

Filing party: Samuel B. Nemirow, Esq., Hill, Betts and Nash, 1220 Nineteenth Street, N. W., Washington, D.C. 20036.

Agreement No. T–4160.

Title: Port Everglades Authority and Sea-Land Service, Inc., Renewal Terminal Lease Agreement.

Parties: Port Everglades Authority (Port) and Sea-Land Service, Inc. (Sea-Land).

Synopsis: Agreement No. T–4160 restates previously approved Agreement No. T–3918 between the parties, and extends the term for a period of 2-years. The Port leased 6 acres of land in Broward County, Florida, to be used by Sea-Land in the handling and processing of containers and related equipment.

Filing party: Don S. Harvey, Port Everglades Authority, P.O. Box 13136, Fort Lauderdale, Florida 33316.

Agreement No. 17–46.

Title: Far East Conference.

Parties:

Japan Line
Kawasaki Kisen Kaisha, Ltd.
Nitsui O.S.K. Lines, Ltd.
A. P. Moller-Maersk Line
Nippon Yusen Kaisha
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would delete Article 23 of the agreement and Item III of Schedule A to the agreement which would eliminate the conference's misrating program.

Filing party: Gerald F. Flynn, Chairman, Far East Conference, 40 Rector Street, New York, New York 10006.

Agreement No. 17–47.

Title: Far East Conference.

Parties:

Japan Line, Ltd.

Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A. P. Moller Maersk Line
Nippon Yusen Kaisha
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: Agreement No. 17-47 would amend Article 8(a) of the basic agreement to provide that matter not docketed in accordance with the Conference procedure cannot be discussed at any Conference meeting unless such discussion is approved by the majority of the attendees voting in accordance with the Conference Agreement and cannot be voted upon unless motion for a vote is unanimously agreed by all parties present. Such matters then can be passed in accordance with the voting procedures of the Conference Agreement.

Filing Party: Gerald J. Flynn, Chairman, Far East Conference, 40 Rector Street, New York, New York 10006.

By Order of the Federal Maritime Commission.

Dated: January 6, 1984.

Francis C. Hurney,
Secretary.

[FR Doc. 84-730 Filed 1-10-84; 8:45 am]
BILLING CODE 6730-01-M

Filing and Approval of Agreement

The Federal Maritime Commission hereby gives notices that on December 28, 1983, the following agreement was filed with the Commission pursuant to section 15 of the Shipping Act, 1916, as amended by section 4 of the Maritime Labor Agreements Act of 1980, Pub. L. 96-325, 94 Stat. 1021, and was deemed approved that date, to the extent it constitutes an assessment agreement as described in the fifth paragraph of section 15, Shipping Act, 1916.

Agreement No.: LM-82-4.

Title: West Gulf Maritime Association Assessment Agreement.

Synopsis: Basic Agreement No. LM-82 is a Resolution of the West Gulf Maritime Association establishing the Guaranteed Annual Income Program and Fringe Benefits Contract Administration Assessment. The amendment LM-82-4 provides for an extension of the current level of assessments for an additional period of time to and including June 30, 1984 in view of the decline in trade and cargoes moving to the ports in the West Gulf.

Filing Party: Royston Raysor, Vickery and Williams, 2200 Texas Commerce Tower, Houston, Texas 77002.

By Order of the Federal Maritime Commission.

Dated: January 6, 1984.

Francis C. Hurney,
Secretary.

[FR Doc. 84-735 Filed 1-10-84; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Allied Bancshares, Inc., et al.; Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under sections 3(a)(1) and 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a) (1) and (3)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Allied Bancshares, Inc.*, Houston, Texas to acquire 100 percent of the voting shares of Texas United Bancorp, Inc., Fort Worth, Texas, and Allied Fort Worth Bancshares, Inc., Houston, Texas, to become a bank holding company by acquiring 100 percent of the voting shares of Texas United Bancorp, Inc., Fort Worth, Texas. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Dallas. Comments on this application must be received not later than February 3, 1984.

Board of Governors of the Federal Reserve System, January 6, 1984.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 84-678 Filed 1-10-84; 8:45 am]
BILLING CODE 6210-01-M

DeKalb County Bancshares, Inc.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The bank holding company listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (49 Federal Register 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated for that application. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. With respect to the application, interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding this application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 2, 1984.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *DeKalb County Bancshares, Inc.*, Clarksdale, Missouri; to acquire Nelsen Insurance Agency, Clarksdale, Missouri. A company engaged in acting as agent for the sale of any insurance in Clarksdale, Missouri, a town with a population not exceeding 5,000, and in the surrounding area in northeast Missouri.

Board of Governors of the Federal Reserve System, January 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-677 Filed 1-10-84; 8:45 am]

BILLING CODE 6210-01-M

First Commonwealth Financial Corporation, et al.; Acquisition of Bank Shares by Bank Holding Companies

The companies in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Commonwealth Financial Corporation,* Indiana, Pennsylvania; to acquire 100 percent of the voting shares or assets of Deposit Bank, DuBois, Pennsylvania. Comments on this application must be received not later than February 3, 1984.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lexington Bancshares, Inc.,* Lexington, Nebraska; to acquire 49.96 percent of the voting shares or assets of Seven V Banco, Inc., Callaway, Nebraska, parent of Seven Valleys State Bank of Callaway, Callaway, Nebraska. Comments on this application must be received not later than February 3, 1984.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Camino Real Bancshares, Inc.,* Carrizo Springs, Texas; to acquire 81.9 percent of the voting shares of Frontier State Bank, Eagle Pass, Texas. Comments on this application must be received not later than February 3, 1984.

2. *Northside Financial Corporation.,* San Antonio, Texas; to acquire 100 percent of the voting shares or assets of Northwest Bank, N.A., San Antonio, Texas. Comments on this application must be received not later than February 3, 1984.

D. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Allied Bancshares, Inc.,* Houston, Texas; to acquire 100 percent of the voting shares of Allied Bank North Capitol Central, N.A., Dallas, Texas. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Dallas. Comments on this application must be received not later than February 3, 1984.

Board of Governors of the Federal Reserve System, January 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-678 Filed 1-10-84; 8:45 am]

BILLING CODE 6210-01-M

First National Bancorp, Inc., et al.; Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. 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 may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First National Bancorp, Inc.,* Centre Hall, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The First National of Centre Hall, Centre Hall, Pennsylvania. Comments on this application must be received not later than February 1, 1984.

2. *Southern Jersey Bancorp.,* Bridgeton, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers and Merchants National Bank of Bridgeton, Bridgeton, New Jersey. Comments on this application must be received not later than February 3, 1984.

B. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Western Pennbancorp, Inc.,* New Castle, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Western Pennsylvania, New Castle, Pennsylvania. Comments on this application must be received not later than January 31, 1984.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Fessenden Bancshares, Inc.,* Fessenden, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Fessenden, Fessenden, North Dakota. Comments on this application must be received not later than February 1, 1984.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Bancorp of Kansas,* Wichita, Kansas; to retain 16.77 percent of the voting shares of The First National Bank of Neodesha, Neodesha, Kansas, and 11.8 percent of the voting shares of Stockgrowers State Bank, Ashland, Kansas, all of which were acquired through the trust department of its subsidiary bank. Comments on this application must be received not later than January 27, 1984.

Board of Governors of the Federal Reserve System, January 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-679 Filed 1-10-84; 8:45 am]

BILLING CODE 6210-01-M

LCB Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y 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 for that application. Once the application has

been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. With respect to each application, interested persons may express their views in writing to the Reserve Bank indicated for that application or to the office 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 February 2, 1984.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *LCB Bancorp. Inc.*, Elyria, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Lorain County Savings & Trust Co., Elyria, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Virginia Banks, Inc.*, Falls Church, Virginia; to acquire 100 percent of the voting shares or assets of First Virginia Bank Citizens-Clintwood, Virginia, the successor by merger to Virginia Citizens Bank, Clintwood, Virginia.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Bancorporation*, Sheboygan, Wisconsin; to acquire 100 percent of the voting shares or assets of S.B.W. Bancorp, Inc., Waupun, Wisconsin, thereby indirectly acquiring The State Bank of Waupun, Waupun, Wisconsin.

2. *Cole-Taylor Financial Group, Inc.*, Northbrook, Illinois; to acquire 92 percent of the voting shares or assets of Ford City Bank & Trust Company, Chicago, Illinois.

3. *Minier Financial*, Minier, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Farmer's State Bank of Minier, Minier, Illinois.

D. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Bancshares of Ripley, Inc.*, Ripley, Tennessee; to become a bank holding company by acquiring 80 percent or more of the voting shares of Bank of Ripley, Ripley, Tennessee.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Valley Bank Holding Company*, Security, Colorado; to acquire 58.6 percent of the voting shares or assets of Mountain National Bank, Woodland Park, Colorado.

2. *Wilson Bancshares, Inc.*, Wilson, Oklahoma; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Bank of Wilson, Wilson, Oklahoma.

F. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First United Bancshares, Inc.*, Houston, Texas; to become a bank holding company by acquiring at least 93.9 percent of the voting shares of United National Bank of Houston, Houston, Texas.

Board of Governors of the Federal Reserve System, January 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-631 Filed 1-10-84; 8:45 am]

BILLING CODE 6210-01-M

First Arkansas Bankstock Corporation, et al; Proposed "De Novo" Nonbank Activities by Bank Holding Companies

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo)* (or continue to engage in an activity earlier commenced *de novo*, directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing shoud identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Arkansas Bankstock Corporation*, Little Rock, Arkansas (financing, servicing, investment advisory, and management consulting activities; southern and midwestern United States): To engage through its subsidiary, FABCO Mortgage Company, Inc., also doing business as FABCO Associates Finance, Incorporated, in the making, procuring or acquiring loans and other extensions of credit for the accounts of others as would be made by commercial banks, savings and loans associations, or other similar-type financial institutions; servicing such loans for others; providing investment or financial advice to any person; and providing management consulting advice to nonaffiliated banks and nonbanking depository institutions, all in accordance with the Board's Regulation Y. These activities will be conducted from offices of its Applicant's subsidiary located in Little Rock, Arkansas, serving the states of Arkansas, Tennessee, Mississippi, Louisiana, Texas, Oklahoma, Missouri, and Kansas. Comments on this application must be received not later than January 26, 1984.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation*, San Francisco, California (making loans and other extensions of credit; Florida): To engage, through its proposed indirect subsidiary, Overseas Finance Corporation, a proposed Delaware corporation, in the activities of making loans and other extensions of credit to domestic and overseas borrowers, including foreign governments and their agencies and instrumentalities. Such activities will include, but not to be limited to, issuing letters of credit and accepting drafts. These activities will be conducted from a *de novo* office in Coral Gables, Florida, serving all fifty states, the District of Columbia and all foreign countries. Due to the need for BankAmerica Corporation to provide a vehicle that management considers suitable for making loan commitments

as early as January 1984, this notice is being published on an emergency basis and comments on this application must be received not later than January 13, 1984.

Board of Governors of the Federal Reserve System, January 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-682 Filed 1-10-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of Disapproval of Three New York State Plan Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on February 14, 1984 in New York City, New York, to reconsider our decision to disapprove New York State Plan Amendments 83-12, 83-13 and 83-17.

DATE: Closing date: Requests to participate in the hearing as a party must be received by January 26, 1984.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207; Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove three New York State Plan Amendments.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 215.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins, in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

New York has requested a reconsideration of our decision to disapprove three State Plan Amendments. The issues in the three State Plan Amendments are discussed below:

New York SPA 83-12—The issue in this matter is whether New York's request to revise the methods and standards used to set rates of reimbursement for psychiatric hospitals operated by the New York State Office of Mental Health violates section 1902(a)(13)(A) of the Social Security Act.

Section 1902(a)(13)(A) of the Social Security Act requires, in part, that payment of hospital services be provided under the State plan through the use of rates which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care service in conformity with applicable State and Federal laws, regulations, and quality and safety standards. The section further states that the methods and standards used to determine rates must take into account the situation of hospital which serve a disproportionate number of low income patients with special needs. The addition of outpatient service costs as allowable costs in the determination of inpatient hospital rates does not constitute costs relative to the provision of inpatient care and services. Therefore, HCFA has determined that New York's proposed plan is in violation of the requirement of section 1902(a)(13)(A) of the Social Security Act.

New York 83-13—The issue in this matter is whether New York's request to amend its long-term care reimbursement plan for residential health care facilities by defining certain assessment fees as allowable costs is in violation of section 1903(a)(1) and section 1902(a)(13)(A) of the Social Security Act. Section 1903(a)(1) of the Social Security Act provides that Federal Financial Participation (FFP) is available to match State expenditures incurred in reimbursing providers of medical assistance. The regulatory assessment and health agency fees the State proposed to consider as allowable costs are not expenditures. Therefore, HCFA has determined that New York's proposed plan amendment is in violation of section 1903(a)(1) of the Social Security Act.

Further, section 1902(a)(13)(A) of the Act requires that payment for long-term care services be provided under the State plan through the use of rates which the State finds and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable States and Federal laws, regulations, and quality and safety standards. Since assessment fees do not constitute expenditures relative to the provision of care and services, HCFA has determined that proposed plan amendment is in violation of section 1902(a)(13)(A) of the Social Security Act.

New York 82-17—The issue in this matter is whether New York's request to allow coverage of continuous 24-hour personal care services in three specific categories is in violation of section 1902(a)(10) and 42 CFR 440.170(f). Section 1902(a)(10) of the Social Security Act specifies, in part, that services available to categorically needy recipients must be equal in amount, duration, and scope for all recipients within the group. The services available to a covered medically needy group also must equal in amount, duration, and scope for all recipients within the group.

The State's proposed plan would limit coverage of personal care services in the following three situations:

1. Recipient is at home awaiting placement in a residential health care facility or hospital, and has an emergency condition which necessitates continuous care;

2. Recipient requires respite care (limit of 2 weeks per year); or

3. A physically disabled recipient needs the services in order to continue or seek employment. Under this third category, services would include "assistance in preparing to go to place of employment, assistance in getting to and from the place of employment and assistance with activities of daily living such as toileting and feeding at the place of employment."

Category 3 provides for more services to employable individuals than to others in the same eligibility group. Therefore, HCFA has determined that New York's proposed plan is in violation of section 1902(a)(10) of the Social Security Act. Furthermore, regulations at 42 CFR 440.170(f) defines personal care services "in a recipient's home." The State's proposed plan allows services related to seeking or maintaining employment. These services are independent of

services furnished in the recipient's home. Therefore, HCFA has determined that New York's proposed plan is in violation of 42 CFR 440.170(f).

The notice to New York announcing an administrative hearing to reconsider our disapproval of its State Plan Amendments reads as follows:

Mr. David Emil,

Deputy Commissioner and General Counsel, New York State Department of Social Services, 40 North Pearl Street, Albany, New York 12243.

Dear Mr. Emil: This is to advise you that your requests for reconsideration of New York State Plan Amendments 83–12 and 83–13 were received on December 12, 1983. Your request for reconsideration of New York State Plan Amendment 83–17 was received on December 17, 1983. You have requested a reconsideration of whether these plan amendments conform to the requirements for approval under the Social Security Act and pertinent Federal regulations.

I am scheduling hearings on your requests to be held on February 14, 1984 in Room 2208, 22nd Floor, 26 Federal Plaza, New York City, New York. The hearings will be held as follows: 9 a.m.—New York SPA 83–12, 10:30 a.m.—New York SPA 83–13, 1:30 p.m.—New York SPA 83–17.

If this date is not acceptable, we would be glad to set another that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding official. If there arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely yours,

Carolyne K. Davis, Ph. D.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: January 6, 1984.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 84–737 Filed 1–10–84; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources and Services Administration Federal Advisory Committee has been filed with the Library of Congress:

National Council on Health Planning and Development.

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, D.C., or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, North Building, Room 1436, 330 Independence Avenue, SW., Washington, D.C. 20201, Telephone (202) 245–6791. Copies may be obtained from Ms. Diane McMenamin, Interim Executive Secretary, National Council on Health Planning and Development, Health Resources and Services Administration, Room 17A–55, Parklawn Building, 5600, Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–4273.

Dated: January 4, 1984.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 84–695 Filed 1–10–84; 8:45 am]

BILLING CODE 4160–16–M

Office of Human Development Services

Administration for Native Americans

AGENCY: Office of Human Development Services, HHS.

SUBJECT: Amendment to Program Announcement 13612–841.

SUMMARY: This is to give public notice of the additional list of Fiscal Year 1983 grantees of the Administration for Native Americans eligible to apply for funding under Program Announcement 13612–841, Financial Assistance for Native American Projects (published at 48 FR 35562, August 4, 1983).

(Catalog of Federal Domestic Assistance Program Number 13612 Native American Programs)

Dated: December 19, 1983.

Casimer R. Wichlacz,

Acting Commissioner, Administration for Native Americans.

Approved: January 4, 1984.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Grantee	State	BPE	Application due date
Native Americans for Community Action	AZ	3/31/84	1/1/84
Leech Lake Reservation Business Committee	MN	3/31/84	1/1/84
Eight Northern Indian Pueblos Council	NM	3/31/84	1/1/84
Business Committee of the Chippewa Cree	MT	3/31/84	1/1/84
Shoshone & Arapahoe Joint Business Council	WY	3/31/84	1/1/84
Oneida Tribe of Indians of Wisconsin	WI	3/31/84	1/1/84
San Carlos Apache Tribe	AZ	3/31/84	1/1/84
Brotherton Indian Nation	WI	3/31/84	1/1/84
Aroostook Micmac Council, Inc	ME	3/31/84	1/1/84
Office of Hawaiian Affairs	HI	3/31/84	1/1/84
Boston Indian Council, Inc	MA	3/31/84	1/1/84
Genessee Valley Indian Assoc	MI	3/31/84	1/1/84
Walker River Paiute Tribe	NV	3/31/84	1/1/84
Baltimore American Indian Center	MD	3/31/84	1/1/84
Metlakatla Indian Community	AK	3/31/84	1/1/84
Mowa Band of Choctaw Indians	AL	3/31/84	1/1/84
Miccosukee Indian Tribe of FL	FL	4/30/84	1/31/84
Ute Mountain Ute Tribe	CO	4/30/84	1/31/84
Community Action for the Urbanized Indian	CA	4/30/84	1/31/84
Menominee Tribe of Indians	WI	4/30/84	1/31/84
Indian Development District of Arizona	AZ	4/30/84	1/31/84
American Indian Community Center	WA	4/30/84	1/31/84
Oklahomans for Indian Opportunity	OK	5/31/84	3/3/84
Rhode Island Indian Council	RI	5/31/84	3/3/84
Jamestown Klallum Tribe	WA	5/31/84	3/3/84
DNA Peoples Legal Services, Inc	AZ	5/31/84	3/3/84
Chickasaw Nation	OK	5/31/84	3/3/84
Kalispel Tribe	WA	5/31/84	3/3/84
Couer d' Alene Tribe	ID	5/31/84	3/3/84
Grand Traverso Band of Ottawa	MI	5/31/84	3/3/84
Fort Bidwell Indian Assoc	CA	5/31/84	3/3/84
Sac and Fox Tribe of Indians	OK	5/31/84	3/3/84
White Earth Reservation Business Committee	MN	5/31/84	3/3/84
Yavapai-Apache Tribe	AZ	5/31/84	3/3/84
Kootenai Tribe of Idaho	ID	5/31/84	3/3/84
Swinomish Indian Tribal Community	WA	5/31/84	3/3/84
Small Tribes of Western Washington	WA	5/31/84	3/3/84
Reno Sparks Indian Colony	NV	5/31/84	3/3/84
Houlton Band of Maliseet	ME	5/31/84	3/3/84
Port Gamble Klallum Indian Colony	WA	5/31/84	3/3/84
Native American Center of Tulsa	OK	6/30/84	4/1/84
Confederated Tribes and Band of the Yakima	WA	6/30/84	4/1/84
Native American Center of Oklahoma City	OK	6/30/84	4/1/84
Powhatan Renape Nation	NJ	6/30/84	4/1/84
Seneca Nation	NY	6/30/84	4/1/84
Passamoquoddy Tribe	ME	6/30/84	4/1/84
Seattle Indian Center	WA	6/30/84	4/1/84
Hopi Tribe	AZ	6/30/84	4/1/84
Turtle Mountain Band of Chippewa	ND	6/30/84	4/1/84
Council for Tribal Employment Rights	WA	6/30/84	4/1/84
Phoenix Indian Center	AZ	6/30/84	4/1/84
The Suquamish Tribe	WA	6/30/84	4/1/84
The Kaw Tribe of OK	OK	6/30/84	4/1/84
Three Affiliated Tribes	ND	6/30/84	4/1/84
Fresno American Indian Center	CA	6/30/84	4/1/84
Makah Indian Tribe	WA	6/30/84	4/1/84
Pueblo of Acoma	NM	6/30/84	4/1/84
Fort McDermitt Paiute-Shoshone Tribe	NV	6/30/84	4/1/84
Pawnee Tribe	OK	7/31/84	5/3/84
Southern California Tribal Chairmen's Assoc	CA	7/31/84	5/3/84
Lummi Tribe	WA	7/31/84	5/3/84
Hoopa Valley Business Council	CA	8/31/84	6/1/84
American Indian Registry for the Performing Arts	CA	8/31/84	6/1/84
Keweenaw Bay Indian Community	MI	8/31/84	6/1/84
Saginaw Chippewa Indian Tribe	MI	8/31/84	6/1/84

Grantee	State	BPE	Application due date
North American Indian Assoc. of Detroit, Inc	MI	8/31/84	6/1/84
Michigan Indian Benefit Assoc	MI	8/31/84	6/1/84
Upper Midwest American Indian Center	MN	8/31/84	6/1/84
Seminole Nation	OK	8/31/84	6/1/84
Muscogee Creek Nation	OK	8/31/84	6/1/84
United Indian Development Assoc	CA	9/30/84	7/3/84
Standing Rock Sioux Tribe	ND	9/30/84	7/3/84
Confederated Tribes of the Umatilla	OR	9/30/84	7/3/84

[FR Doc. 84-562 Filed 1-10-84; 8:45 am]
BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Choctaw Nation of Oklahoma; Transfer of Federally Owned Lands

This notice is published in exercise of authority by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1. On May 26, 1983, pursuant to the authority contained in the Federal Property and Administrative Services Act of 1949, as amended by Public Law 93-599 dated January 2, 1975 (88 Stat. 1954), the below-described property was transferred by the Administrator of General Services to the Secretary of the Interior, without reimbursement, to be held in trust for the use and benefit of the Choctaw Nation of Oklahoma:

Indian Meridian

The W½ and W½E½ in Section 28, Township 5 North, Range 17 East, less and except the following tracts of land designated as Tracts 1 and 2.

The above described W½ and W½E½ of Section 28 is subject to the right of ingress and egress over and across the existing access road.

Tract 1

A parcel of land in the Northwest quarter of Section 28, Township 5 North, Range 17 East, Pittsburg County, Oklahoma, more particularly described as follows:

Beginning at the Northeast corner of the Northwest quarter of Section 28; thence South 1 degree, 45 minutes, 12 seconds East along the East line of the Northwest quarter, 1827.20 feet; thence South 88 degrees, 42 minutes, 27 seconds West and parallel with the North line of Section 28, 1574.04 feet; thence North 0 degrees, 17 minutes, 44 seconds West and parallel with the West line of Section 28, 1195.21 feet; thence South 88 degrees, 42 minutes, 27 seconds West and parallel with the North line of Section 28, 397.70 feet; thence North 0 degrees, 17 minutes, 44 seconds West and parallel with the West line of Section 28, 632.21 feet to a point on the North line of Section 28, said point being 710.00 feet East of the Northwest corner of Section 28; thence North 88 degrees, 42 minutes, 27 seconds East along the North line of Section 28, 1925.25 feet to the point of beginning, containing 70.82 acres.

Tract 2

A parcel of land in Section 28, Township 5 North, Range 17 East, Pittsburg County, Oklahoma, more particularly described as follows:

Commencing at the Northeast corner of the Northwest quarter of Section 28; thence South 1 degree, 45 minutes, 12 seconds East along the North-South ¼ section line, 2762.44 feet; thence South 88 degrees, 42 minutes, 27 seconds West, 526.61 feet to the true point of beginning; thence North 88 degrees, 42 minutes, 27 seconds East and parallel with the North line of Section 28, 1207.35 feet; thence South 1 degree, 42 minutes, 03 seconds East and parallel with the East line of the West ½ of the East ½ of Section 28, 1079.42 feet; thence South 88 degrees, 42 minutes, 27 seconds West and parallel with the North line of Section 28, 1214.67 feet; thence North 1 degree, 18 minutes, 44 seconds West, 1079.39 feet to the point of beginning, containing 30.0 acres.

These lands are to be treated as and receive the same benefits and protection as other trust lands held for the benefit and use of the Choctaw Nation of Oklahoma. Appropriate notation will be made in the land records of the Bureau of Indian Affairs.

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 84-538 Filed 1-10-84; 8:45 am]
BILLING CODE 4310-02-M

Wisconsin Winnebago Tribe; Establishment of Reservation

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Notice is hereby given that, under the authority of Section 7 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 467), the hereinafter described land, located in Sauk County, Wisconsin, was proclaimed to be an Indian reservation, effective December 29, 1983, for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservation.

4th Principal Meridian

Township 12 North, Range 6 East, Town of Delton

Sec. 10, in SW¼SW¼; more specifically described as:

Commencing at the Southwest corner of said Section 10; thence North 4°09' West, 659.49 feet along the West line of said Section 10 to the point of beginning; thence continuing North 4°09' West, 656.80 feet along the West line of said Section 10 to the Northwest corner of the SW¼SW¼ of said Section 10, thence North 86°00' East, 792.20 feet along the North line of the SW¼SW¼ of said Section 10, thence South 4°09' East 657.59 feet parallel with West line of said Section 10; thence South 86°03' West, 792.20 feet to the point of beginning, containing 11.45 acres, more or less, subject to all valid existing easements, reservations, and rights-of-way of record.

John W. Fritz,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 84-534 Filed 1-10-84; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

Idaho Falls District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Meeting of the Idaho Falls District Grazing Advisory Board.

SUMMARY: The Idaho Falls District Grazing Advisory Board will meet Saturday, February 11, 1984. Notice of this meeting is in accordance with Pub. L 92-463. The meeting will begin at 9 a.m. at the Idaho Falls BLM Office, 940 Lincoln Road in Idaho Falls. The meeting is open to the public; public comments on agenda items will be accepted from 10:30 to 11 a.m.

Agenda items for the meeting include a discussion of change of livestock class in the Big Desert, the status of the sheep experiment station's Mooreland Allotment, update on weed control, cooperative management agreements for the Big Butte Resource Area, an update on the resource management plan for the Medicine Lodge Resource Area, presentation of the Edie Bench prescribed burn plan, update on the 8100 budget, and reviewing 1984 advisory board funds and project requests.

Summary minutes of the meeting will be kept in the District Office and will be available for public inspection and reproduction during business hours (7:45 a.m. to 4:30 p.m.) within 30 days of the meeting.

FOR MORE INFORMATION CONTACT:

Julia Corbett, (208) 529-1020.

Dated: January 3, 1984.

O'dell A. Frandsen,

District Manager.

[FR Doc. 84-532 Filed 1-10-84; 8:45 am]
BILLING CODE 4310-GG-M

Minerals Management Service

Use of Electronic Funds Transfer (EFT) for Offshore Bonus and Rental Payments

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Public Meetings.

SUMMARY: Notice is hereby given that the Minerals Management Service will conduct four orientation seminars to present information specific to the required use of Electronic Funds Transfer (EFT) payments for 4/5 bonus and first year rental payments resulting from offshore lease offerings conducted after February 1, 1984.

DATES: The Seiminars are scheduled to be conducted as follows:

Seminar Date, City/State
February 2, 1984, Los Angeles, California
February 7, 1984, Houston, Texas
February 9, 1984, New Orleans, Louisiana
February 14, 1984, New York, New York

ADDRESS: Each seminar is expected to last approximately 3 hours and each will begin at 9:00 a.m. local time at the following locations:

City/State, Location
Los Angeles, California, Los Angeles Convention Center, 1206 S. Figueroa Street
Houston, Texas, Hyatt Regency Hotel, 1200 Louisiana Street
New Orleans, Louisiana, Hilton Hotel, Poydrous at the Mississippi River
New York, New York, New York University Graduate Business School, Merrill Hall, 90 Trinity Place

FOR FURTHER INFORMATION CONTACT: Don Gilman, Chief, Funds Administration and Investments Section, Royalty Management Program, Minerals Management Service, MS–652, P.O. Box 25165, Denver, Colorado 80225. Phone: (303) 231–3435.

SUPPLEMENTARY INFORMATION: The seminars, responding to a recent Interim Rule published on July 26, 1983, (48 FR 33996), are designed to provide the participants with an overview of both the Federal Reserve Communication System and the Treasury Financial Communication System. In addition, detailed information will be presented concerning funds transfer message format as well as required routing and reference information.

Dated: January 4, 1984.

Robert E. Boldt,

Associate Director for Royalty Management.

[FR Doc. 84-691 Filed 1-10-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

San Antonio Missions Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the San Antonio Missions Advisory Commission will be held at 1:00 p.m., Tuesday, January 31, 1984, in Room A206, Federal Building, 727 E. Durango Blvd., San Antonio, Texas.

The San Antonio Missions Advisory Commission was established pursuant to Public Law 95–629, Title II, November 10, 1978. The purpose of the commission is to advise the Secretary of the Interior or his designee on matters relating to the park and with respect to carrying out the provisions of the statute establishing the San Antonio Missions National Historical Park.

Matters to be discussed at this meeting include:

Park Operations Update
"Friends of the Park" Update
Briefing on Hot Wells Project
Handicapped Accessibility Plan
36 CFR Update
Resource Management Plan
Special Recognition Presentation

The meeting will be open to the public, however, facilities and space for accommodating members of the public will be limited and persons will be accommodated on a first-come, first-serve basis.

Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, San Antonio Missions National Historical Park.

Persons wishing further information regarding this meeting or who wish to submit a written statement may contact Jose A. Cisneros, Superintendent, 727 E. Durango Blvd., Room A612, San Antonio, Texas 78206, telephone (512) 229–6009.

Minutes of the meeting will be available for public review approximately four weeks after the meeting at the office of the San Antonio Missions National Historical Park.

Dated: December 30, 1983.

Jack Neckels,

Acting Regional Director, Southwest Region.

[FR Doc. 84-684 Filed 1-10-84; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-143]

Import Investigations; Certain Amorphous Metal Alloys and Amorphous Metal Articles; Prehearing Conference

Notice is hereby given that the prehearing conference will commence at 9:00 a.m. on January 16, 1984, at the Waterfront Center, Room 201, 1010 Wisconsin Avenue, NW., Washington, D.C. 20007, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the Federal Register.

Issued: January 4, 1984.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 84-715 Filed 1-10-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-162]

Import Investigations; Certain Cardiac Pacemakers and Components Thereof; Commission Determination To Change the Effective Date of Initial Determination

AGENCY: International Trade Commission.

ACTION: The Commission has changed the effective date of an initial determination (I.D.) (Order No. 16) from Jan. 16, 1984, to Jan. 27, 1984.

Authority: 48 FR 20226, May 5, 1983 (to be codified at 19 CFR § 210.53(h)).

SUPPLEMENTARY INFORMATION: An I.D. joining Cordis Corp. as a respondent in the above-referenced investigation was issued on Dec. 14, 1983. Cordis Corp. filed a motion (Motion No. 162–18–C) on Dec. 23, 1983, for an extension of time in which to file a petition for review of the I.D. The motion was granted and Cordis was given until Jan. 6, 1984, to file a petition. In order for the Commission to be able to consider the petition and any responses thereto, the effective date of the I.D. has been changed to Jan. 27, 1984.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0493.

By order of the Commission.

Issued: January 6, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-713 Filed 1-10-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-168]

Import Investigations; Certain Combination Punch Press and Laser Assemblies and Components Thereof; Order

For reasons of judicial economy, administrative necessity, and pursuant to my authority as Chief Administrative Law Judge, I hereby relieve Administrative Law Judge Janet D. Saxon and designate Administrative Law Judge James P. Timony as Presiding

Officer in this investigation effective on the date of issuance of this order.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: January 5, 1984.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 84-722 Filed 1-10-84; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-153]

Import Investigations; Certain Microprocessors, Related Parts and Systems; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement:

NEC Corporation, NEC Electronics In. (named in the Notice of Investigation as NEC Electronics U.S.A. Inc.) and NEC Home Electronics (U.S.A.) Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on January 4, 1984.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: January 4, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-717 Filed 1-10-84; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-163]

Import Investigation; Certain Nutating Valve Actuators and Components Thereof; Order

For reasons of judicial economy, administrative necessity, and pursuant to my authority as Chief Administrative Law Judge, I hereby relieve Administrative Law Judge Janet D. Saxon and designate Administrative Law Judge James P. Timony as Presiding Officer in this investigation effective on the date of issuance of this order.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: January 5, 1984.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 84-725 Filed 1-10-84; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-172]

Import Investigations; Certain Shearing Machines; Order No. 4

For reasons of judicial economy, administrative necessity, and pursuant to my authority as Chief Administrative Law Judge, I hereby relieve Administrative Law Judge Donald K. Duvall and designate Administrative Law Judge James P. Timony as Presiding Officer in this investigation effective on the date of issuance of this order.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: January 6, 1984.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 84-723 Filed 1-10-84; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-167]

Import Investigations; Certain Single Handle Faucets; Commission Determination Not To Review Initial Determination Joining Respondent

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined not to review an initial determination (I.D.) (Order No. 4) to join Everpromotion Industrial Co., Ltd., as a respondent.

AUTHORITY: (U.S.C. 1337, 47 FR 25134, June 10, 1982, and 48 FR 20226, May 5, 1983 (to be codified at 19 CFR 210.53(c) and (h)).

SUPPLEMENTARY INFORMATION: On November 4, 1983, complainant moved to amend the complaint and notice of investigation by joining Everpromotion Industrial Company, Ltd., as a party respondent to the investigation. On December 15, 1983, the presiding officer issued an I.D. granting the motion. No petitions for review were received and no comments from other Government agencies were received. The Commission has determined not to review the I.D.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202-523-0493.

By order of the Commission.

Issued: January 6, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-712 Filed 1-10-84; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-179]

Import Investigations; Certain Spherical Roller Bearings and Components Thereof and Tools and Equipment for the Manufacture Thereof; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 5, 1983, under section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337).

on behalf of SKF Industries, Inc., 1100 First Avenue, King of Prussia, Pennsylvania 19406. The complaint alleges unfair methods of competition and unfair acts in the importation of certain spherical roller bearings and components thereof and tools, equipment and technical assistance for the assembly or manufacture thereof into the United States, or in their sale, by reason of alleged direct, contributory and induced infringement of claims 1–4, 9, 11, 12, 16, 17, 19–23, 25, 26, 28, and 29 of U.S. Letters Patent 3,990,753. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order and permanent cease and desist orders.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on January 3, 1984, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain spherical roller bearings and components thereof and tools, equipment and technical assistance for the assembly or manufacture thereof into the United States, or in their sale, by reason of alleged direct, contributory or induced infringement of claims 1–4, 9, 11, 12, 16, 17, 19–23, 25, 26, 28 or 29 of U.S. Letters Patent 3,990,753, the effect or tendency of which is to destory or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—SKF Industries, Inc., 1100 First Avenue, King of Prussia, Pennsylvania 19406.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

FAG Bearings Corporation, Hamilton Avenue, Stamford, Connecticut 06904

FAG Kugelfischer Georg Schafer & Co., Georg Schafer Strasse, Postfach 1260, 8720, Schweinfurt 2, Federal Republic of Germany

(c) Juan Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone (202) 523–0471.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone (202) 523–1272.

By order of the Commission.

Issued: January 4, 1984.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-718 Filed 1-10-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-178]

Import Investigations; Certain Vinyl-Covered Foam Blocks; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: January 5, 1984.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 84-724 Filed 1-10-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-174]

Import Investigations; Certain Woodworking Machines; Order No. 3

For reasons of judicial economy, administrative necessity, and pursuant to my authority as Chief Administrative Law Judge, I hereby relieve Administrative Law Judge Donald K. Duvall and designate Administrative Law Judge James P. Timony as Presiding Officer in this investigation effective on the date of issuance of this order.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the Federal Register.

Issued: January 5, 1984.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 84-721 Filed 1-10-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-155 and 731-TA-156 (Preliminary)]

Choline Chloride From Canada and the United Kingdom

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)), that there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury,[2] by reason of imports from Canada and the United Kingdom of choline chloride, provided for in item 439.50 of the Tariff Schedules of the United States, which are alleged to be sole in the United States at less than fair value (LTFV).

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioners Stern, Haggart, and Lodwick determined only that there was a reasonable indication of material injury concerning imports from Canada; Commissioner Haggart determined only that there was a reasonable indication of material injury with respect to imports from the United Kingdom.

Background

On November 15, 1983, counsel for Syntex Agribusiness, Inc., filed petitions with the Commission and the Department of Commerce alleging that imports of choline chloride from Canada and the United Kingdom are being sold in the United States at LTFV, and that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of such merchandise. Accordingly, effective November 15, 1983, the Commission instituted preliminary antidumping investigations under section 733(a) of the Act (19 U.S.C. 1673(a)).

Notice of the institution of the Commission's investigations and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register, of November 25, 1983 (48 FR 53185). The conference was held in Washington, D.C. on December 8, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on the investigations to the Secretary of Commerce on December 30, 1983. A public version of the Commission's report, Choline Chloride from Canada and the United Kingdom (investigations Nos. 731–TA–155 and 156 (Preliminary), USITC Publication 1473, 1983) contains the views of the Commission and information developed during the investigations.

Issued: December 30, 1983.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-720 Filed 1-10-84; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 332–174]

International Developments in Biotechnology and Their Possible Impact on Certain Sectors of the U.S. Chemical Industry

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), the Commission has instituted on its own motion investigation No. 332–174 for the purpose of gathering and presenting information on international developments in biotechnology. The information will be used in assessing the competitiveness of biotechnologically produced products in world markets, the current status of the industry, future trends, and certain other areas relevant to the investigation. The possible future impact of biotechnology on U.S. chemical trade will be analyzed.

Background

Biotechnology is a rapidly growing field of expertise which is on the leading edge of the high technology industries. The exchange and licensing of developed fermentation and other biologically oriented processes is growing. The potential exists that products produced by biotechnological processes will impact future trade, particularly in chemicals. Certain drugs and related products, enzymes, ferments, amino acids, biologicals, and alcohols, that are already large items of trade, may in the future be made by new biotechnological processes more expensively, purer, or both, which could alter current trade patterns.

EFFECTIVE DATE: January 3, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Michels or Mr. Jack Greenblatt, Energy and Chemicals Division, U.S. International Trade Commission, Washington, D.C. 20436 (telephone 202–523–0293, 202–523–1212 respectively).

Written Submissions

While there is no public hearing scheduled for this study, written submissions from interested parties are invited. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested parties. To be ensured of consideration by the Commission, written statements should be received by the close of business on April 30, 1984. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

Issued: January 4, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-716 Filed 1-10-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701–TA–203 (Preliminary)]

Iron Bars From Brazil

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is no reasonable indication that an industry in the United States is materially injured, or is theatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of continuous-cast iron bars, provided for in items 606.97 and 657.09 of the Tariff Schedules of the United States upon which bounties or grants are alleged to be paid.

Background

On November 15, 1983, counsel for Wells Manufacturing Co., a U.S. producer, filed a petition with the U.S. International Trade Commission and with the Department of Commerce alleging that an industry in the United States is materially injured, by reason of imports from Brazil of continuous-cast iron bars upon which bounties or grants are alleged to be paid. Accordingly, effective November 15, 1983, the Commission instituted a preliminary countervailing duty investigation under section 703(a) of the Act (19 U.S.C. 1671b(a)).

Notice of the Commission's institution of the investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register on November 25, 1983 (48 FR 53184). The conference was held in Washington, D.C. on December 9, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmited its report on the investigation to the Secretary of Commerce on December 30, 1983. A public verison of the Commission's report, Iron Bars from Brazil (investigation No. 701–TA–203 (preliminary), USITC Publication 1472, 1983) contains the views of the Commission and information developed during the investigation.

Issued: December 30, 1983.

[1] The "record" is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

By order of the Commission.
Kenneth R. Mason,
Secretary.
[FR Doc. 84-719 Filed 1-10- 8:45 am]
BILLING CODE 7020-02-M-

[Investigation No. 731-TA-126 (Final)]

Potassium Permanganate From Spain

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(1)), that an industry in the United States is materially injured [2] by reason of imports of potassium permanganate, provided for in item 420.28 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective August 9, 1983, following a preliminary determination by the Department of Commerce that imports of potassium permanganate from Spain are being sold in the United States at LTFV.

Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register of August 31, 1983 (48 FR 39519). The hearing was held in Washington, D.C., on December 2, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its report on this investigation to the Secretary of Commerce on January 5, 1984. A public version of the Commission's report, *Potassium Permanganate from Spain* (investigation No. 731-TA-126 (Final), USITC Publication 1474, 1984), contains the views of the Commission and information developed during the investigation.

Issued: January 5, 1984.

By order of the Commission.
Kenneth R. Mason,
Secretary.
[FR Doc. 84-714 Filed 1-10-84; 8:45 am]
BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Commissioner Stern determines that an industry in the United States is materially injured, or threatened with material injury, by reason of the subject imports.

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: January 6, 1984.

The following Notices were filed in accordance with section 10526 (a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Southern States Cooperative, Inc.
(2) 6606 W. Broad Street, P.O. Box 26234, Richmond, VA 23260.
(3) 6606 W. Broad Street, P.O. Box 26234, Richmond, VA 23260.
(4) Garry L. Horn, P.O. Box 26234, Richmond, VA 23260.

James H. Bayne,
Acting Secretary.
[FR Doc. 84-659 Filed 1-10-84; 8:45 am]
BILLING CODE 7035-1-M

[OP2-007; MCF-15543]

Motor Carriers Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed by Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the Federal Register and *ICC Register.* Failure seasonable to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 40 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any applicatiion directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate

authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this descision-notice, or the application of a non-complying applicant shall stand denied.

Decided: December 20, 1983.

By the Commission, Review Board Members Carleton, Williams, and Dowell. (Dowell not participating).

Inquires Can Be Made to Team 2 (202) 275-7251.

James H. Bayne,

Acting Secretary.

MC-F-15543, filed December 9, 1983. John A. Gallagher, Jr., Alice M. Gallagher, Frank P. Gallagher and Stephen A. Gallagher (315 Howe Ave., Passaic, NJ 07055)—Continuance in control—Barclay Transportation Services Inc. (Barclay) (6 Just Road, Fairfield , NJ 07007), Community Coach, Inc. (Coach) (315 Howe Ave., Passaic, NJ 07055), and Community Transit, Inc., (Transit) (315 Howe Ave., Passaic, NJ 07055).

Representative: J. G. Dail, Jr., 6623A Old Dominion Drive, McLean, VA 22101.

Applicants seek authority to continue in control of Barclay, Coach, and Transit, upon institution of operations by Barclay in interstate or foreign commerce, as a motor common carrier.

Coach operates under MC-76022 as a motor common carrier, over irregular routes, of passengers, in charter and special operations, between points in the United States (except Hawaii).

Transit operates under MC-145548 as a motor common carrier of passenger, over regular, routes in the northern New Jersey-New York City area.

Barclay was granted authority in No. MC-169528 to transport passengers, in charter and special operations, between points in the United States (except Hawaii).

[FR Doc. 84-658 Filed 1-10-84; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Reports, Recommendations and Responses

Reports Issued

Marine Accident Report: Capsizing of the Charter Passenger Vessel SAN MATEO, Morro Bay, California, February 16, 1983 (NTSB/MAR-83/09) (NTIS Order No. PB83-916409).

Railroad Accident Reports: Brief Format, Issue Number 1—1982 (NTSB/RAB-83/04) (NTIS Order No. PB83-917204).

Note.—Reports may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports call 703-487-4650 and to order subscriptions to reports call 703-487-4630.

Recommendations to:

Railroad—*Southern Railway System: Jan. 4: R-83-103:* Revise procedures for train orders related to weather conditions to prescribe conditions under which the train orders should be issued, and specific actions to be taken by crewmembers so that the risk of operating hazards caused by weather will be minimized. *R-83-104:* Examine periodically its rights-of-way for unstable slope conditions, and eliminate these conditions where possible. Install slide detection devices or adopt other appropriate measures to detect landslides where unstable slope conditions cannot be eliminated. *R-83-105:* Adopt the recommended practices of the American Railway Engineering Association regarding maintenance of earth and rock slopes.

Federal Railroad Administration: Jan. 4: R-83-106: Require that landslides on railroad rights-of-way be reported separately from other weather-related accident data. *R-83-107:* Review information available from the Federal Highway Administration regarding highway right-of-way construction and maintenance, and disseminate to railroads information pertinent to railroad right-of-way stabilization programs.

Association of American Railroads: Jan. 4: R-83-108: Inform its members of the circumstances of the Amtrak derailment at Rockfish, Virginia, on April 3, 1983, and encourage them to review and revise as necessary their procedures for train orders related to weather conditions to prescribe conditions under which the train orders should be issued, and specific actions to be taken by crewmembers so that the risk of operating hazards caused by weather will be minimized. *R-83-109:* Encourage its members to review and revise as necessary their operating rules and practices to make them more effective in predictable abnormal operating situations.

Note.—Single copies of these recommendation letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include recommendation number in your request. Copies of recent recommendations are free of charge while supplies last. Recommendations that must be photocopied will be billed at a cost of 20 cents per page ($2 minimum charge).

Recommendation Responses from

Aviation—*Federal Aviation Administration: Dec. 27: A-83-57:* Does not plan to issue an Airworthiness Directive applicable to Beech Models 19, 23, and 24 series airplanes to require incorporation of Beechcraft Service Instructions No. 1095, Revision 1 regarding fuel selector valves. *Dec. 30: A-82-51:* Page 12 of General Aviation Airworthiness Alert (Advisory Circular 43-16) No. 55, dated February 1983 contains an article on the Hartzell propeller A282 inner clamp bolt and the availability of a new bolt as a replacement.

Railroad—*Washington Metropolitan Area Transit Authority: Dec. 14: R-82-8 and -58:* Operating Rule 61 as revised by Special Order 82-9, Rule 62, Rule 63, Rule 64, and Rule 65 address the requirement for an operator to obtain Operations Control Center permission to operate in any mode other than full automatic. Will require an absolute block whenever an operator is authorized to operate Mode 2 (stop and proceed up to 15 mph) in addition to previous requirement for an absolute block when an operator was authorized to operate Mode 3 (Automatic Train Protection cut out). *R-82-9:* Any time the cathode ray tube indicates that a switch may not be functioning properly, OCC immediately assumes that the interlocking is defective and absolute block procedures are followed. *R-82-10:* Recent disciplinary action has been taken against offenders of operating rules requiring operators to report to the OCC whenever they are unable to operate in the fully automatic mode. *R-82-11:* Believes that requiring the OCC to instruct a train's operator as to the intended route for the train and receive proper acknowledgment from the operator before a manually operated train is permitted to enter a block containing an interlocking will create substantial radio traffic and that this additional radio traffic is not necessary when operating Mode 2 (obeying cab signals). Will install positive wayside route signals that will tell the operator his route at all times. *R-82-14:* Has completed modifications to the OCC radio panels to provide radio communicating capability that is commensurate with peak radio traffic demands of the expanding rail system. *R-82-15, -16, -55, and -57:* A totally revised training, retraining, and certification program for operators, transportation supervisors, station attendants, station supervisors, and OCC personnel will be phased in in 1984. *R-82-17, -18, -70, and -72:* Has retrofitted the revenue system with standardized circuit breakers that assure that the breaker stays "locked out" after a short (approximately 15 seconds) delay. Will install passenger initiated evacuation devices for the car center doors and will initiate an accompanying information and publicity program for passengers. *R-82-56:* WMATA has a new General Superintendent. *R-82-59:* Is introducing into its radio protocol the use of the International Phonetic Alphabet to assure distinction between like-sounding letters. *R-82-62:* Has revised the speed

definitions in its operating rules. *R–82–64:* Modified the automated alert system to segregate and color code vital alarms from routine alarms, and to provide an audible indicator. *R–82–66:* Maintenance forces inspect switch machine fusetrons during each applicable scheduled preventative maintenance inspection. *R–82–67:* Portable radios have been purchased and are issued routinely to train operators. *R–82–71:* The existing car storage battery on the Metrorail cars provides battery power for emergency interior lights, tail lights and headlights, door operations, communications, and other critical systems if third rail power is lost or removed in an emergency. Has concluded that an additional back-up system is not justified. *R–82–73:* There is no hardware successfully in use on any freight or passenger railroad for detecting detrailments. BART's derail bar failures have increased potential risks of system operation, due to stopped and delayed trains, as manual intervention is necessary to recover from delays. *R–82–74:* Has obtained an UMTA grant to procure, test, and demonstrate a reliable carborne monitor in July 1983 and is proceeding with the project. *R–82–75 and –76:* Permanent tunnel radio communication facilities for fire, police, and rescue personnel has been completed. *R–82–77:* Has conducted 19 emergency simulations and disaster drills in conjunction with jurisdictional fire departments and rescue services. Several of these drills have involved area hospitals. Classroom and field training and familiarization drills are conducted for all fire department personnel.

Highway—*State of North Carolina: Dec. 16: H–83–51:* The University of North Carolina Safety Research Center is closely monitoring the effectiveness of motor vehicle child passenger restraint systems in motor vehicle collisions. Is directing that special emphasis be placed on proper use of motor vehicle child restraint systems in promotions funded in part or in total from the State budget.

Federal Highway Administration: Dec. 28: H–83–68: Acknowledges receipt of recommendation to revise Motor Carrier Safety Regulation 391.43 to incorporate a provision which will prohibit the falsification or omission of medical information in connection with a medical certification physical examination.

Territory of Puerto Rico: Dec. 19: H–83–49 and –50: Secretary of Transportation and Public Works and Executive Director of the Traffic Safety Commission will examine existing statutes on child seat belt restraint systems.

Marine—*Massachusetts Maritime Academy: Dec. 27: M–82–43:* Has instituted appropriate continuing training whenever a ship is available to acquaint all cadets with the routes available to exit from the engineroom and other spaces on the ship. *M–82–44:* The BAY STATE is no longer utilized as a training vessel; no training vessel is currently assigned to the academy. *M–82–45:* Appropriate indoctrination program will be utilized to accomplish the safe, effective evacuation from the engineroom in whatever training vessel is assigned. *M–82–46:* A shipboard safety board has been established and is in effect during periods of training cruise. *M–82–47:* Has established a policy of keeping the doors to the engineroom and stair towers on the training ship closed at all times except for the passage of personnel. *M–82–48:* Chief Engineer has begun developing standing orders for inport cadet engineering watches in the engineroom on the training ship similar to the standing orders for underway watches. *M–82–49:* Chief Engineer has begun developing standing orders for licensed engineer officer watches on the training ship both underway and inport when the engineering plant is in operation.

North Carolina Department of Crime Control & Public Safety: Dec. 22: M–83–76 and –77: Refered recommendations concerning alcohol involvement in recreational boating accidents to the Governor's Crime Commission for study.

State of Georgia: Dec. 27: M–83–76 and –77: Boating safety officials are studying the extent of alcohol involvement in recreational boating accidents.

United States Coast Guard Auxiliary: Dec. 13: M–83–75: Has requested the Office of Health Services, U.S. Coast Guard Headquarters to develop necessary educational material that can be incorporated into the auxiliary's public education courses. With this information, the auxiliary will print a pamphlet covering educational material on the hazards of alcohol use and its effect on recreational boat operators. Will furnish a wallet-size card indicating the relationship between number of drinks and the legal limits for boat operators to be handed out by courtesy examiners when conducting the courtesy marine examination.

United States Power Squadrons: Nov. 16: M–83–75: Will include material on the hazards of alcohol use and its effect on recreational boat operators in its course material.

International Association of Classification Societies: Dec. 23: M–83–89: Advised member societies of the circumstances of the accident involving the Dutch bulk carrier M/V AMSTELVOORN on September 26, 1982, and solicited their views on necessary action to require that all conditions of excessive vibrations, mechanical failure of pipelines and fittings, and hydraulic system leaks are corrected on vessels which they have classed to improve the reliability of installed Hydroster model MS–800–TE–1 steering gear system in all modes of system operation.

Note.—Single copies of these response letters are available on written request to: Public Inquires Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 20 cents per page ($2 minimum charge).

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

January 6, 1984.

[FR Doc. 84–657 Filed 1–10–84; 8:45 am]

BILLING CODE 7533–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13697; 812-5703]

FPA Perennial Fund, Inc.; Filing of Application

January 5, 1984.

Notice is hereby given that FPA Perennial Fund, Inc. ("Applicant"), 10301 West Pico Boulevard, Los Angeles, CA 90064, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on November 22, 1983, requesting an order pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Sections 2(a)(32), 2(a)(35) and 22(c) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit Applicant to assess a contingent deferred sales charge on certain redemptions of shares purchased in single transactions involving $1,000,000 or more. All interested persons are referred to the application on file the with Commission for a statement of the representations contained therein which are summarized below and to the Act and the rules thereunder for the text of the applicable provisions.

Applicant states that it was organized as a corporation under the laws of Maryland on September 14, 1983, and filed with the Commission a registration statement on Form N–1 under the Act on November 3, 1983. Mitchel, Schreiber, Watts & Co., Inc. will be Applicant's distributor ("Distributor"), and will receive the proceeds of the contingent deferred sales charge.

Applicant proposes to impose traditional front-end sales loads on sales of its shares purchased in single transactions involving less than $1,000,000, but proposes to impose no front-end on purchases in single transactions of $1,000,000 or more. Consequently, in single transactions of $1,000,000 or more, purchasers will be able to have the entire proceeds of their purchase payments fully invested from the time they are made. However, Applicant also proposes to pay the Distributor a contingent defferred sales charge from the proceeds of certain redemptions of shares initially sold without a sales charge. According to the application, the contingent deferrred sales charge would only be imposed in the event of a redemption transaction within one year following the purchase transaction and would be 0.85% of the aggregate purchase payments made by the investor.

Applicant represents that the contingent deferred sales charge would be imposed if an investor redeems an amount which causes the value of the investor's account with the Applicant to fall below the total dollar amount of purchase payments made by the investor without an initial sales charge during a period of one year prior to the redemption. No contingent deferred sales charge would be imposed when the investor redeems amounts derived from (1) increases in the value of the account above the total dollar amount of purchase payments during the year (either through growth in net asset value per share of the Fund or through reinvestment of dividends and capital gains distributions in additional shares of the Fund) or (2) purchase payments made more than one year prior to the redemption. Applicant states that in determining whether a contingent deferred sales charge is payable, it would be assumed that shares held the longest are the first to be redeemed.

Applicant asserts that its proposal permits shareholders to have the advantages of greater investment dollars working for them from the time of their purchase. Moreover, Applicant states that the contingent deferred sales charge applies only to redemptions of amounts representing purchase payments during the year after a purchase without initial sales charge; it does not apply to increases in the investor's account through reinvestment of distributions or increases in net asset value per share.

Applicant argues that the imposition of the contingent deferred sales charge in the manner described above would not cause shares of Applicant to fall outside the definition of "redeemable securit(ies)" in Section 2(a)(32) of the Act. Applicant further believes that imposition of the contingent deferred sales charge will not restrict a shareholder from receiving his proportionate share of the current net assets of the Applicant, but will merely defer the deduction of a sales charge and make it contingent upon an event which may never occur. However, in order to avoid uncertainty in this regard, Applicant requests an exemption from the operation of Section 2(a)(32) of the Act to the extent necessary to permit imposition of the proposed contingent deferred sales charge.

Applicant avers that the proposed contingent deferred sales charge is consistent with the intent of the Act's definition of "sales load" in Section 2(a)(35). The contingent deferred sales charge is paid to the Distributor to reimburse it solely for expenses related to the sale of shares and, therefore, Applicant submits that this arrangement is within the Section 2(a)(35) definition of sales load, but for the timing of the imposition of the charge. Appplicant contends that the deferral of its sales charge, and its contingency upon the occurrence of an event which may not occur, does not change the basic nature of this charge, which is in every other respect a sales charge. However, Applicant requests an exemption from the provisions of Section 2(a)(35), to the extent necessary to permit imposition of the proposed charge.

Applicant further asserts that the implementation of the proposed contingent deferred sales charge would not violate Section 22(c) of the Act or Rule 22c-1 thereunder. However, in order to avoid any possibility that questions might be raised as to the potential applicability of Section 22(c) and Rule 22c-1, Applicant requests an exemption from the operation of the provisions of Ruel 22c-1 to the extent necessary or appropriate to permit Applicant to implement the proposed contingent deferred sales charge.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 30, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, prusuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc 84-670 Filed 1-10-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13699; 812-5712]

Over-the-Counter Securities Fund, Inc.; Filing of Application

January 5, 1984.

Notice is hereby given that Over-The-Counter Securities Fund, Inc. ("Applicant"), Plymouth and Walnut Avenues, Oreland, PA 19075, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on November 28, 1983, for an order of the Commission, pursuant to Sections 6(c) and 17(d) of the Act and Rule 17d-1 thereunder, granting an exemption from the provisions of Section 13(a)(2), 18(f)(1), 22(f) and (g) of the Act to the extent necessary to permit Applicant to implement and maintain a proposed deferred compensation plan for its non-interested directors. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below and to the Act and the rules thereunder for the text of the applicable provisions.

According to the application Applicant's board of directors consists of five individuals. Three of the directors who are not "interested persons" of the Applicant within the meaning of Section 2(a)(19) of the Act, receive a fee of $100 each for each board meeting attended plus expenses and an annual fee of $600. Applicant states that this is the only remuneration that it pays its directors. Applicant also states that for the year ended December 31, 1982, it paid an aggregate amount of $13,800 in director's fees.

Applicant proposes to adopt a deferred compensation plan ("Plan") which will permit Applicant's non-interested directors to defer receipt of their director's fees. Applicant states that the purpose of the Plan is to enable the directors to avoid the loss of Social Security benefits which they might otherwise be entitled to and to defer payment of income taxes on the director fees until retirement. Applicant states that the election by a director to participate in the Plan will continue in effect during the year of election and for each subsequent calendar year unless the director notifies Applicant's president, in writing, before January 1 of the next succeeding year.

Under the Plan all amounts otherwise due as director's fees to participating directors will be invested in shares of Applicant, with all dividends and capital gains being reinvested in shares of Applicant. Applicant states that its obligation to make payments to a director will be based on the value of the total amounts set aside for the director's benefit. Applicant further states that these amounts shall be paid upon retirement to the director in a number of annual installments determined by Applicant. In the event of a director's death or incapacity, amounts payable to him under the Plan

will be paid to his designated beneficiary or legal representative. Finally, Applicant states that its obligation to make payments under the terms of the Plan will be solely an obligation of Applicant and will be payable from its general assets and property.

Applicant represents that the Plan will have only a negligible effect on its financial condition and that the Plan does not obligate Applicant to retain any directors nor to pay them a director's fee. Applicant further represents that directors who are interested persons within the meaning of Section 2(a)(19) of the Act will not participate in the Plan since they do not receive director's fees from Applicant. According to the application the participating directors may not transfer or otherwise negotiate the shares purchased with their directors fees.

Applicant submits that the withholding of director's fees and the investment of these funds in shares of Applicant does not constitute the issuance of a class of senior securities within the meaning of Section 18(f)(1) of the Act nor does it increase the speculative character of Applicant's outstanding voting securities. However, Applicant requests an exemption from Section 18(f)(1) of the Act, as well as, Section 13(a)(2) of the Act which prohibits the issuance of senior securities without approval from a majority of shareholders. Applicant also requests an exemption from Section 22(f) of the Act which prohibits an issuer from restricting the transferability of its shares and from Section 22(g) of the Act which prohibits an Investment Company from issuing its shares for services or property other than cash or securities. Applicant represents that it will be the legal and beneficial owner of the shares set aside for the participating directors and that Applicant may redeem or otherwise alienate those shares at any time. Applicant asserts that the Plan is not a joint transaction between itself and the directors within the meaning of Section 17(d) of the Act and Rule 17d–1 thereunder and that the participation of Applicant in the Plan is not any less advantageous than the participation of the directors in the Plan.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 30, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-672 Filed 1-10-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20522; SR-NASD-83-26]

National Association of Securities Dealers, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

January 3, 1984.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, N.W., Washington, D.C. 20006, submitted on December 19, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1984 (the "Act") and Rule 19b–4 thereunder. The proposed rule change is described in Items I, II and III below, which were prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides for a new charge to subscribers for access to NASDAQ Level 1 Service (for securities other than National Market System securities) and NASDAQ/National Market System Last Sale Service through an authorized portable quotation device capable of receiving quotations for not more than forty securities at a time at a rate of $6.00 per month per device.

II. Self-Regulatory Organization's Statements Regarding the Proposed Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. 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 Purposes of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change establishes, on a pilot basis, a reduced fee for limited usage subscribers to NASDSQ Level 1 Service and NMS Last Sale information. This service will permit subscribers access to NASDAQ Level 1 Service for securities other than National Market System securities and to NASDAQ/NMS Last Sale Service through an authorized hand held quotation device. This portable device will be capable of receiving quotations for not more than forty (40) securities at a time at a charge of $6.00 per month per device. The monthly charge per device is designed to cover the monthly operating expenses of the service at a level commensurate with the limited use accorded. The Association intends to review the rate and usage limitation contained in this rule change after a suitable period of time in which to determine the amount of interest in the service and the different types of service which may be requested by other Vendors.

Section 15A(b)(5) of the Securities Exchange Act provides that the rules of a national securities association must provide for the equitable allocation of reasonable dues, fee and other charges among persons using any facility or system which the association operates or controls. The Association believes that the reduced fee for limited access, usage of the information is consistent with these provisions. The proposed rule change is also consistent with Section 11A(a)(1)(B)(iii) which provides for facilitating the availability to investors of information with respect to quotations for and transactions in securities in that the provision will allow investors immediate access to both NASDAQ Level 1 quotations and NMS Last Sale Trade reporting.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Association does not foresee any burden on competition by this proposed rule change since the fee will be available to any subscriber utilizing an interrogation device with comparable limitations on access to the information.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others. Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective immediately pursuant to a request for accelerated effectiveness as provided for under Section 19(b)(2) of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written comments concerning the proposed rule change within 21 days after the date of publication in the Federal Register. Persons submitting comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-NASD-83-26.

Copies of the Submission and any related documents, 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. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the NASD.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Sections 11A and 15A of the Act and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the rule change. Section 11Aa(1)(C)(iii) of the Act states that broad availability of quotation and transaction information for securities is in the public interest. By providing a lower fee for market information obtained through limited use terminals, the proposed rule change furthers this statutory goal of wide dissemination of market information. Specifically, the Commission finds good cause to accelerate approval of this rule change in order to provide access to NASDAQ Level I Service and to NASDAQ/NMS last sale service at reduced rates at the earliest date possible.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the commission, by the division of Market Regulation, pursuant to delegated authority.[1]

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 84-674 Filed 1-10-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20532; File No. SR-NASD-83-19]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.; Relating to the Filing Requirements Under the Interpretation of the Board of Governors; Review of Corporate Financing

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 14, 1983, the National Association of Securities Dealers Inc. ("Association") filed with Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been revised by the self-regulatory organization on December 16, 1983. The Commission is publishing this notice to solicit comments on the proposed rule change thereto from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing to amend the filing requirements of the Interpretation of the Board of Governors— Review of Corporate Financing ("Corporate Financing Interpretation") under Article III, Section 1 of the Rules of Fair Practice (NASD Manual (CCH) para 2151, at page 2025) to provide an exemption for securities registered with the Securities and Exchange Commission on registration statement Form S-3 or a similar form promulgated in lieu of Form S-3 by an issuer which presently meets the requirements of Form S-3 as those requirements were in effect on March 1, 1983. The text of the proposed amendment follows:

Filing Requirements [1]

* * * * *

Documents relating to the following issues need not be filed with the Association:

(1) securities which pursuant to the provisions of Section 3(a)(12) of the Securities Exchange Act of 1934 are exempt securities;

(2) securities of investment companies as defined in Section 3 of the Investment Company Act of 1940 (except issues of closed-end management companies);

(3) variable contracts; and

[(4) straight debt issues rated "B" or better by a recognized rating service.]

(4) securities registered with the Securities and Exchange Commission on registration statement Form S-3 or a similar form promulgated in lieu of Form S-3 issued by an issuer which meets the requirements of Form S-3 as those requirements were in effect on March 1, 1983.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The self-regulatory organization has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspect of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Association is proposing to amend the filing requirements of the Corporate Financing Interpretation to exempt all debt and equity offerings of securities registered with the Commission on Registration Statement Form S-3 (or a similar form promulgated in lieu of Form S-3 by an issuer which meets the substantive requirements of Form S-3 as those requirements were in effect on March 1, 1983), the current exemption for "straight" debt rated "B" or better would be eliminated. In addition, the proposed amendment would replace the Association's current interpretation (S.E.C. Securities Act Release No. 19648 (April 4, 1983), 48 FR 15358) which provides an exemption for securities which are registered on a Form S-3 and offered pursuant to Rule 415 of the Securities Exchange Act of 1933.

To use Form S-3, both the registrant and the transaction must meet specified qualifications. Form S-3 may be used by a U.S. registrant which has been a reporting company for 36 months prior to the filing, and has made timely filings for 12 months preceding the filing date. In addition, neither the registrant nor its subsidiaries may have defaulted in the payment of required dividends or any

[1] 17 CFR 200.30-3(a)(12).

[1] New material is italicized; deleted material is bracketed.

material obligations since the end of its last audited year.

Form S–3 may be used for primary offerings of such registrants which have outstanding voting stock held by non-affiliates with an aggregate market value of $150 million, or alternatively, $100 million aggregate market value and annual trading volume of three million shares. Primary offerings by qualified registrants of "investment grade" non-convertible debt and preferred securities may also be registered on Form S–3. Investment grade debt is defined as those securities rated by a nationally recognized statistical organization in the four highest categories (e.g., "AAA" through "BBB" by Standard & Poor's and "Aaa" through "Baa" by Moody's). Secondary offerings of outstanding securities by any person other than the issuer may be registered on Form S–3 if the securities are quoted on NASDAO or listed on a national securities exchange. Finally, rights offerings, dividend and interest reinvestment plans, and offerings of securities upon conversion and the exercise of warrants may be registered on Form S–3.

The proposed amendments would alter present NASD filing requirements for both debt and equity securities. With respect to equity offerings, i.e., offering which have any attribute of equity ownership, the number of offerings which would be required to be filed would be substantially reduced. Currently, most equity offerings are required to be filed with the Association, except where the offering is being made pursuant to Rule 415 by a registrant which qualifies to register on a Form S–3. Under the proposed amendment, the current exemption for equity offerings registered on a Form S–3 and distributed pursuant to Rule 415 would be eliminated. In its place, the Association is proposing that an exemption be adopted for all equity offerings registered with the SEC on Form S–3 (or a similar form promulgated in lieu of Form S–3 by an issuer which meets the substantive requirements of Form S–3 as those requirements were in effect on March 1, 1983).

With respect to debt offerings, i.e., offerings with no equity characteristics, the proposed amendments would require a greater number of such offerings to be filed than at present. Under the present Corporate Financing Interpretation, public offerings of "straight debt" rated "B" or better by a nationally recognized rating agency and "shelf" offerings of debt registered on a Form S–3 are exempt from filing.

Pursuant to the proposed amendment, the present exemptions for straight debt rated "B" or better and "shelf" offerings of debt registered on a Form S–3 would be eliminated. In its place, an exemption for all debt registered on Form S–3 (or a similar form promulgated in lieu of Form S–3 by an issuer which meets the substantive requirements of Form S–3 as those requirements were in effect on March 1, 1983) would be adopted. Generally speaking, therefore, debt instruments rated "B" or "BB" by Standard & Poor's and "B" or "Ba" by Moody's would become subject to NASD filing requirements. In view of the proliferation of debt which is considered below "investment grade", it is considered appropriate to subject these instruments to review by the Association to assure the fairness and reasonableness of their overall underwriting terms and arrangements.

The Association believes that the competitive market forces which ordinarily affect a public offering by an issuer qualified to use Form S–3 are effective in assuring that the underwriting terms and arrangements generally are fair and reasonable. In addition, rapid access to the marketplace has become increasingly critical for certain issuers and such access has been facilitated by SEC policies which permit offerings to become effective without detailed review. Therefore, the Association believes it is appropriate to take steps to assure ready access to the marketplace so long as investor protection is assured.

The proposed amendment relates only to filing requirements and does not constitute an exemption from the substantive requirements of the Corporate Financing Interpretation. Members will still be expected to assure compliance with those requirements in any offerings in which they participate. Additionally, the proposed exemption relates only to filing requirements under the Corporate Financing Interpretation; the exemption does not extend to offerings which are subject to Schedule E of Article IV, Section 2 of the NASD By-Laws concerning offerings by members of their own securities or those of affiliates.

The Association is charged under both Sections 15(A)(b)(2) and 15(A)(b)(6) of the Securities Exchange Act of 1934 with the responsibility of promulgating rules which prevent fraudulent and manipulative practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and generally protect investors. The proposed rule change is designed to further these purposes by facilitating access to the marketplace within the parameters of investor protection.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

The Association believes this rule change presents no impact on competition which is not necessary in furtherance of the purposes of the Secrities Exchange Act of 1934, as amended.

(C) *Self-Regulatory Organization's Statement of Comment on the Proposed Rule Change Received from Members, Participants, or Others*

The Association published the proposed rule change for comment in Notice-to-Members 83–25 (May 27, 1983) as an amendment to the proposed Corporate Financing Rule which is to be filed with the Commission pursuant to the Rule 19b–4. The Association received a total of one comment letter on the rule proposal. While generally supportive of the proposal to exempt all offerings registered on a Form S–3 from the filing requirements of the Corporate Financing Interpretation, the commentator suggested that the exemption also should extend to Rule 415 shelf offerings on Forms S–2 and S–1 and to certain other S–2 filings, and that the current exemption for debt rated "B" or better should be retained. The commentator also recommended that offerings which are exempt from the Association's filing requirements should not be subject to the substantive requirements of the Corporate Financing Interpretation.

After due consideration of the comments received, the Board of Governors approved the proposed rule change.

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

(R) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 4, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-675 Filed 1-10-84; 8:45 am]

BILLING CODE 8010-01-M

Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges and of Opportunity for Hearing

January 5, 1984

In the Matter of Application of the Philadelphia Stock Exchange, Inc. For Unlisted Trading Priviledges in Certain Securities; Securities Exchange Act of 1934.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of:

First Pennsylvania Corp. (File No. 7-7306)
Convertible Depository Shares (each representing ¼ shart of $10.50 Cumulative Convertible Preferred Stock, Series C

This security is listed and registered on one or more other national securities exchange and is reported on the consolidated transaction reporting system.

Interested person are invited to submit on or before January 26, 1984 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-671 Filed 1-10-84; 8:45 am]

BILLING CODE 8010-01-M

SYNTHETIC FUELS CORPORATION

Solicitation for Coal or Lignite Gasification Projects

AGENCY: Synthetic Fuels Corporation.

ACTION: Issuance of Solicitation for Coal or Lignite Gasification Projects.

SUMMARY: Notice is hereby given that on January 5, 1984 the United States Synthetic Fuels Corporation issued a Solicitation for Coal or Lignite Gasification Projects soliciting proposals for synthetic fuel projects to be assisted under Title I, Part B, of the Energy Security Act of 1980 (Pub. L. 96-294).

EFFECTIVE DATE: January 5, 1984.

FOR FURTHER INFORMATION CONTACT: Ralph L. Bayrer, Vice President-Projects, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822-6436.

For copies of the solicitation contact: Catherine McMillan, Director of Public Disclosure, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822-6460.

United States Synthetic Fuels Corporation.

Leonard C. Axelrod,

Acting Group Vice President-Corporate.

[FR Doc. 84-703 Filed 1-10-84; 8:45 am]

BILLING CODE 6000-03-M

Solicitation for Coal-Water Fuel Projects

AGENCY: Synthetic Fuels Corporation.

ACTION: Issuance of Solicitation for Coal-Water Fuel Projects.

SUMMARY: Notice is hereby given that on January 5, 1984 the United States Synthetic Fuels Corporation issued a Solicitation for Coal-Water Fuel Projects soliciting proposals for synthetic fuel projects to be assisted under Title I, Part B, of the Energy Security Act of 1980 (Pub. L. 96-294).

EFFECTIVE DATE: January 5, 1984.

FOR FURTHER INFORMATION CONTACT: Ralph L. Bayrer, Vice President—Projects, United States Synthetic Fuels Corporation, 2121 K Street, NW, Washington, D.C. 20586, (202) 822-6436.

For copies of the solicitation contact: Catherine McMillan, Director of Public Disclosure, United States Synthetic Fuels Corporation, 2121 K Street, NW, Washington, D.C. 20586, (202) 822-6460.

United States Synthetic Fuels Corporation.

Leonard C. Axelrod,

Acting Group Vice President—Corporate.

[FR Doc. 84-700 Filed 1-10-84; 8:45 am]

BILLING CODE 6000-00

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[BS-AP-No. 2215]

Seaboard System Railroad, Inc.; Public Hearing

The Seaboard System Railroad, Inc., has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance of the automatic block signal system between Mile Post Q-88.4 at Monon, Indiana, and Mile Post Q-112.3 at Delphi, Indiana, on the Indianapolis Branch of the Louisville Division. This proceeding is identified as FRA Block Signal Application Number 2215.

After examining the carrier's propposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10:00 a.m. on March 6, 1984, in Room 402 of the U.S. Post Office and Court House at 46 East Ohio Street, Indianapolis, Indiana.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initital statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct

of the hearing, will be announced at the hearing.

Issued in Washington, D.C. on January 5, 1984.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 84-573 Filed 1-10-84; 8:45 am]

BILLING CODE 4910-06-M

VETERANS ADMINISTRATION

Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice under Public Law 92-463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held at the Miami Marriott Hotel, 1201 N.W. Le Jeune Rd. (N.W. 42nd Avenue) Miami, Florida 33126, on February 13, 1984. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans Administration on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects. The Committee adivses the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on its findings.

The meeting will be open to the public up to the seating capacity of the room from 8 to 8:30 a.m., on February 13, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. James A. Hagans, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202-389-3702), prior to January 27, 1984.

The meeting will be closed from 8:30 a.m. to 7:15 p.m. on February 13, for consideration of specific proposals in accordance with provisions set forth in subsection 10(d) of Pub. L. 92-463, as amended by section 5(c) of Pub. L. 94-409, and subsection (c)(6) and (c)(9)(B) of section 552b, title 5, United States Code. During this portion of the meeting, discussions and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of the Committee's recommendations would likely frustrate implementation of final proposed actions.

Dated: January 4, 1984.

By direction of the Administrator:

Larry R. Moen,

Deputy Director, Office of Public and Consumer Affairs.

[FR Doc. 84-692 Filed 1-10-84; 8:45 am]

BILLING CODE 8320-01-M

Privacy Act of 1974; Report of New Matching Program

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The VA (Veterans Administration) is providing notice that the Office of Inspector General will conduct a series of computer matches of VA compensation and pension records with Federal, State and local records of incarcerated persons. The goal of these matches is to detect unwarranted compensation, DIC (dependency and indemnity compensation) and pension payments made under title 38, United States Code, which may result when the VA is not notified that a veteran or beneficiary had been confined as a result of conviction of a felony, or a felony or misdemeanor in the case of a pension recipient, for any part of a period beginning sixty-one days after the incareration begins.

DATES: It is anticipated the matches will commence in January 1984.

ADDRESS: Interested persons may comment on the proposed matches by writing to the Assistant Inspector General for Policy, Planning and Resources (53), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Renald P. Mrani, Assistant Inspector General for Policy, Planning and Resources, Office of the Inspector General, Veterans Administration (202) 389-2915.

SUPPLEMENTARY INFORMATION: Further information regarding the matching program is provided in this notice. This information is required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Matching Programs, issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). A copy of this notice has been provided to both House of Congress and the Office of Management and Budget.

Dated: January 4, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Report of Matching Program: Veterans Administration Compensation and Pension Records With Federal, State and Local Penal Records

a. *Authority:* The Inspector General Act of 1978, Public Law 95-452.

b. *Program Description:*

(1). *Purpose:* The OIG (Office of Inspector General) plans to match lists of veterans and beneficiaries who receive compensation, DIC (dependency and indemnity compensation) or pension benefits from the VA (Veterans Administration) with records of Federal, State and local correctional organizations to identify recipients who may be ineligible to receive these benefits. This ineligibility may occur when the VA has not been informed of the incarceration of the individual for a period of more than sixty days following his/her conviction for a felony, or for a misdemeanor or felony in the case of a pension recipient. Sections 505 and 3113 of title 38, United States Code, require that the VA reduce or discontinue compensation, DIC or pension payments to such persons who are incarcerated beyond sixty days. It is planned that the initial match will be with records of the Federal Bureau of Prisons, Department of Justice, and subsequent matches will be with the records of State and selected local correctional agencies.

(2). *Procedures:* An initial match will be made of VA records with records of the Federal Bureau of Prisons, Department of Justice. The match will be performed by the VA OIG. If this match demonstrates the effectiveness of matching VA and Federal penal records to detect overpayments of veteran benefits, the Inspector General may direct that additional matches be conducted with the penal records of California, Florida, Georgia, Louisiana, Mississippi, Ohio and Texas. The Inspector General may further direct that matches be conducted with some or all of the remaining States and with selected local penal records that have been automated. Such matches of VA with State and local penal records will be conducted by the VA OIG whenever possible, but in some cases may be conducted by State or local agencies at their request. The list of recipients of veteran benefits utilized by the OIG will contain only social security numbers. When necessary to verify the identity of recipients who may be listed in Federal, State or local penal records, additional identifying data such as the data of birth, place of birth and sex may be

released to these organizations. The names of veterans and beneficiaries will not be provided to a Federal, State or local agency except in connection with a proceeding for the collection of a debt owed the United States resulting from the receipt of VA benefits, or in response to a written request from the agency for a purpose provided by law. These matches may be cyclical or may be repeated periodically.

In the event of a "hit", i.e., the determination through the matching program that the VA has not been notified of the incarceration of a recipient, the identity of the recipient as an incarcerated individual will be verified by the OIG and if the period of incarceration has continued for more than sixty days, the information will be referred to the Chief Benefits Director of the VA for consideration of reduction or suspension of the benefit and action to recover any overpayment. Where there are reasonable grounds to believe there has been a violation of criminal law, the matter will be investigated and referred for prosecutive consideration.

c. *Records to be matched:* Lists extracted from the following systems of records will be matched with Federal, State and local penal records:

Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22/28) (47 FR 372-375, January 5, 1982; 47 FR 16132, April 14, 1982; 47 FR 40742, September 15, 1982). The disclosure of information from this system of records, for the purpose of the matching program, is permitted by a published routine use.

d. *Period of Match:* Intermittently from approximately January 1984.

e. *Safeguards:* Records used in the matches and data generated as a result, will be safeguarded from unauthorized disclosure. Access will be limited to those persons who have a need for the information in order to conduct the matches or follow-up actions. All of the material will be stored in locked containers when not in use. Prior to releasing any information from the VA system of records to a State or local agency the OIG will obtain a written agreement from the matching agency specifying that the matching file will remain the property of the VA and will be returned to the OIG or destroyed upon completion of the match, as appropriate; that it will be used and accessed only to match the files previously agreed to; that it will not be used to extract information concerning "non-hit" individuals for any purpose; and that it will not be duplicated or disseminated within or outside the matching agency unless authorized in writing by the VA OIG.

f. *Retention and Disposition:* Records not resulting in "hits" will be destroyed by burning, shredding or electronic erasing within two months of the completion of the individual match. Records resulting in "hits" will be retained by either the OIG or the Department of Veterans Benefits until the completion of any necessary administrative or legal action and will then be disposed of in accordance with approved records control schedules and/or approved disposition authority from the Archivist of the United States.

[FR Doc. 84-633 Filed 1-10-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 7
Wednesday, January 11, 1984

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).

CONTENTS

1

CIVIL AERONAUTICS BOARD

Short Notice Addition and Closure of Items for the January 10, 1984 Meeting

TIME AND DATE: 10:00 a.m., January 10, 1984.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT: 24. Report on Thailand. (BIA). 25. Report on Germany. (BIA).

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, The Secretary, (202) 673-5068.

[S. 730 Filed 1-9-84; 9:24 am]
BILLING CODE 6320-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold a Closed Commission Meeting Thursday, January 12, 1984.

January 5, 1984.

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Thursday, January 12, 1984 following the Open Meeting, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, N.W. Washington, D.C.

Agenda, Item No. and Subject

Hearing—1—Applications for Review and a petition to Reopen the Record and Enlarge the Issues in the Brownfield, Texas comparative FM proceeding (Docket Nos. 81-164 and 81-165).

This item is closed to the public because it concerns Adjudicatory Matters (See 47 CFR 0.603 (j)).

The following persons are expected to attend:

Commissioners and their Assistants, Managing Director and members of his staff General Counsel and members of his staff Chief, Office of Public Affairs and members of his staff.

Action by the Commission January 4, 1984. Commissioners Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: January 6, 1984.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S. 84-844 Filed 1-9-84; 3:11 pm]
BILLING CODE 6712-10-M

3

FEDERAL COMMUNICATIONS COMMISSION

FCC to Hold Open Commission Meeting, Thursday, January 12, 1984.

January 5, 1984.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 12, 1984, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No. and Subject

Private Radio—1—*Title:* Report and Order in the Matter of Amendment of Rules Concerning Medical Services Operations in the 450-470 MHz Band in the Special Emergency Radio Service. *Summary:* The FCC will consider proposed rules regarding operational requirements for equipment on MED frequency pairs.

Private Radio—2—*Title:* Notice of Proposed Rule Making (RM 4560) to add the Gulf of Mexico to authorized service area of maritime mobile systems operating in the 216-220 MHz band. *Summary:* The FCC will consider whether to propose amending Parts 2, 81 and 83 of the rules to expand the allocation of the 216-220 MHz band for use in the maritime service. Maritime communications in the 216-220 MHz band are currently limited to the Mississippi River System and the Gulf Intracoastal Waterway. A rulemaking petition (RM 4560) asks the FCC to estimate the service area restrictions applicable to the maritime services use of the band.

Issued: January 6, 1984.

Private Radio—3—*Title:* Memorandum Opinion and Order regarding Petitions for Reconsideration of the FCC's Report and Order updating and codifying the General Mobile Radio Service (GMRS) Rules. *Summary:* The FCC will consider whether to grant the Petition for Partial Reconsideration of AT&T and the Petition for Reconsideration of the Personal Radio Steering Group (PRSG) of its Report and Order updating and codifying the rules in the General Mobile Radio Service (GMRS).

Common Carrier—1—*Title:* Section 214 Authorization for Provision by a Telephone Common Carrier of Lines for its Cable Television and Other Non-Common Carrier Services Outside Its Telephone Service Area. *Summary:* Notice of Proposed Rulemaking proposing to grant blanket authorization for certain lines.

Policy—1—*Title:* Mass Media Docket No. 82-441 relating to subscription television authorization for noncommercial educational television station licensees. *Summary:* The Commission will consider whether to authorize noncommercial educational television station licensees to transmit programming on a subscription basis.

Policy—2—*Title:* In the Matter of Repeal of the "Regional Concentration of Control" Provisions of the Commission's Multiple Ownership Rules. *Summary:* The Commission will consider whether to issue a *Notice of Proposed Rule Making* looking toward repeal or modification of the three-station regional concentration of control rule.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S. 845 Filed 1-9-84; 3:11 pm]
BILLING CODE 6712-01-M

4

FEDERAL ELECTION COMMISSION

Federal Register No. 84-331.

PREVIOUSLY ANNOUNCED DATES AND TIME: Thursday, January 12, 1984, 10:00 A.M.

PURSUANT TO 11 CFR 3.5(D)(1), THE COMMISSION IS ADDING THE FOLLOWING

MATTER TO THE OPEN MEETING AGENDA: Application of 26 USC 9033(c) to the 1984 Presidential Nominating Process.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[S. 84–772 Filed 1–9–84; 10:35 am]

BILLING CODE 6715–01–M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Monday, January 16, 1984.

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 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.

Dated: January 6, 1984.

James McAfee,

Associate Secretary of the Board.

[S. 84–747 Filed 1–9–84; 9:24 a.m.]

BILLING CODE 6210–01–M

6

FEDERAL TRADE COMMISSION

TIME AND DATES: 10:00 a.m., Wednesday, January 18, 1984.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580

STATUS: Open.

MATTERS TO BE CONSIDERED: American Association of Advertising Agencies; Presentation entitled "Advertising In Different Kinds of Markets".

CONTANCT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Information: (202) 523–1892; Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[S. 84–769 Filed 1–9–84; 10:05 a.m.]

BILLING CODE 6750–01–M

7

INTERNATIONAL TRADE COMMISSION

USITC SE–84–4.

TIME AND DATE: 2:30 p.m. Wednesday, January 18, 1984.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints: a. Certain x-ray image intensifier tubes and instruments (Docket No. 1005).
5. Investigation 104–TAA–20 (Certain Castor Oil Products from Brazil)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary. (202) 523–0161.

[S. 84–711 Filed 1–9–84; 9:24 am]

BILLING CODE 7020–02–M

8

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 48 FR 246 December 21, 1983 page 56469.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m. on January 12, 1984.

CHANGES IN THE MEETING: This meeting is canceled.

Dated: January 9, 1984.

E. Ross Buckley,

General Counsel.

[S. 83–832 Filed 1–9–84; 3:11 pm]

BILLING CODE 7600–01–M

Federal Register

Wednesday
January 11, 1984

Part II

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 326

ADVISORY COMMITTEE ON FEDERAL PAY

5 CFR Part 1411

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

5 CFR Part 1701

DEPARTMENT OF ENERGY

10 CFR Part 1040

OFFICE OF THE FEDERAL INSPECTOR FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

10 CFR Part 1535

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 410

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1033

UNITED STATES INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 219

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 607

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO—UNITED STATES SECTION

22 CFR Part 1103

BOARD FOR INTERNATIONAL BROADCASTING

22 CFR Part 1304

AMERICAN BATTLE MONUMENTS COMMISSION

36 CFR Part 406

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR Part 1175

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services

45 CFR Part 1181

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

45 CFR Part 1706

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 807

MARINE MAMMAL COMMISSION

50 CFR Part 550

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs

AGENCIES: Administrative Conference of the United States; Advisory Committee on Federal Pay; Advisory Commission on Intergovernmental Relations; Department of Energy; Office of the Federal Inspector for the Alaska Natural Gas Transportation System; Export-Import Bank of the United States; United States International Trade Commission; International Development Cooperation Agency, Agency for International Development; U.S. Arms Control and Disarmament Agency; International Boundary and Water Commission, United States and Mexico-United States Section; Board for International Broadcasting; American Battle Monuments Commission; National Foundation on the Arts and the Humanities, National Endowment for the Humanities; National Foundation on the Arts and the Humanities, Institute of Museum Services; National Commission on Libraries and Information Science; National Transportation Safety Board; Marine Mammal Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the agencies listed above.

DATES: To be assured of consideration, comments must be in writing and must be received on or before May 10, 1984. Comments should refer to specific sections in the regulation.

ADDRESSES: See individual agencies below.

FOR FURTHER INFORMATION CONTACT: See individual agencies below.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the following agencies:

Administrative Conference of the United States; Advisory Committee on Federal Pay; Advisory Commission on Intergovernmental Relations; Department of Energy; Office of the Federal Inspector for the Alaska Natural Gas Transportation System; Export-Import Bank of the United States; United States International Trade Commission; International Development Cooperation Agency, Agency for International Development; U.S. Arms Control and Disarmament Agency; International Boundary and Water Commission, United States and Mexico-United States Section; Board for International Broadcasting; American Battle Monuments Commission; National Foundation on the Arts and the Humanities, National Endowment for the Humanities; National Foundation on the Arts and the Humanities, Institute of Museum Services; National Commission on Libraries and Information Science; National Transportation Safety Board; Marine Mammal Commission.

(hereinafter "the agencies"). As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that

> No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (amendment italicized).

Because the agencies are required by this amendment to promulgate implementing regulations, and because the proposed standards and procedures to be established are the same for all of the agencies, the agencies are publishing this notice of proposed rulemaking jointly. The final rule adopted by each agency will be codified in that agency's portion of the Code of Federal Regulations as indicated in the information provided for individual agencies below. The agencies agreed to joint publication of the preamble and the text of the regulation in order to expedite its issuance and minimize costs, in view of the identity in proposed standards among the agencies. If, following the public comment period, one or more of the agencies desires to promulgate a final regulation with different substantive provisions in order to account for its particular needs identified in response to public comments, it will, of course, do so.

The substantive nondiscrimination obligations of the agencies, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies on April 15, 1983.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

Section-by-Section Analysis

Section —.101 Purpose.

Section —.101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section —.102 Application.

The proposed regulation applies to all programs or activities conducted by the agency.

Section —.103 Definitions.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § —.160(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." The definition of "complete complaint" enables the agency to determine the beginning of its obligation to investigate a complaint (*see* § —.170(d)).

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The term "facility" is used in § —.150 and § —.170(e).

"Handicapped person." The definition of "handicapped person" is a shortened version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). In the interest of brevity, examples of handicapping conditions appearing under the term "physical or mental impairment" are deleted.

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified handicapped person is one who can achieve the purpose of the program without modifications in the program that would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore we concluded that the school was not required by section 504 to make such modifications that would

result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section —.110 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The process shall include consultation with interested persons, including consultation with handicapped persons or organizations representing handicapped persons. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

Section —.130 General prohibitions against discrimination.

Section —.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § —.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Whenever the agency has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § —.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ —.150– —.151) and communications (§ —.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § —.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discriminate on the basis of handicap.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped persons may

be limited to those handicapped persons.

Section —.140 Employment.

Section—.140 prohibits discrimination on the basis of handicap in employment by Executive agencies. This regulation is in accord with a recent decision of the Fifth Circuit that holds that, despite the resulting overlap of coverage with section 501 of the Rehabilitation Act of 1973, (29 U.S.C. 791), Congress intended section 504 to cover the employment practices of Executive agencies. The court also held that in order to give effect to both section 504 and section 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. *Prewitt v. United States Postal Service,* 662 F.2d 292 (5th Cir. 1981).

Consistent with that decision, this section provides that the standards, requirements, and procedures of section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, shall be those applicable to employment in federally conducted programs or activities. In addition to this section, § —.170(b) of this regulation specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1979 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

Section —.150 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–41.58), with certain modifications. Thus, §—.150 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ —.150(a)(1)). However, § —.150, unlike 28 CFR 41.56–41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ —.150(a)(2)).

Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § —.160(e). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis,* 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis,* circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico v. Goldschmidt,* 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis (APTA),* 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of paragraph (a)(2) is an effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This paragraph acknowledges, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to handicapped persons. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section —.151 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section —.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR sections 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers

Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § —.150.

Section —.160 Communications.

Section —.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § —.160(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ —.160). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § —.160(e). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble § —.150(a)(3)). Unless not required by § —.160(e), the agency shall provide auxiliary aids at no cost to the handicapped person.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public (1) the communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preference regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature. § —.160(a)(1)(ii). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Paragraph (d) requires the agency to take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the agency's programs and activities. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section —.170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency will designate an official responsible for coordinating implementation of this section (§ —.170(c)). The agency is required to accept and investigate all complete complaints (§ —.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ —.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act or section 502 was designed, constructed, or altered in a manner that does not provide ready access and use to handicapped persons.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ —.170(g)). One appeal within the agency shall be provided (§ —.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ —.170(i)).

Paragraph (l) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 326

ADDRESS: Comments should be sent to: Administrative Conference of the United States, 2120 L Street, Suite 500, Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Richard K. Berg, Esq., General Counsel, Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, D.C. 20037; (202) 254-7020 TDD: (202) 724-7678.

List of Subjects in 1 CFR Part 326

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 1 of the Code of Federal Regulations be amended by adding Part 326 as set forth at the end of this document.

Richard K. Berg,
General Counsel.

PART 326—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Authority: 29 U.S.C. 794.

ADVISORY COMMITTEE ON FEDERAL PAY

5 CFR Part 1411

ADDRESS: Comments should be sent to: Ms. Lucretia Dewey Tanner, Executive Director, Advisory Committee on Federal Pay, 1730 K Street, N.W., Suite 205, Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: The above named person, Telephone: (202) 653–6193, TDD: (202) 724–7678.

List of Subjects in 5 CFR Part 1411

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 5 of the Code of Federal Regulations be amended by adding Part 1411 as set forth at the end of this document.

Lucretia Dewey Tanner,

Executive Director.

PART 1411—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY ADVISORY COMMITTEE ON FEDERAL PAY

Authority: 29 U.S.C. 794.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

5 CFR Part 1701

ADDRESS: Comments should be sent to Advisory Commission on Intergovernmental Relations, Suite 2000, Vanguard Building, 1111 20th Street, NW., Washington, DC 20575.

FOR FURTHER INFORMATION CONTACT: Franklin A. Steinko, Jr., Budget and Management Officer, Advisory Commission on Intergovernmental Relations, Suite 2000, Vanguard Building, 1111 20th Street, NW., Washington, DC 20575, Phone: (202) 653–5640, TDD (202) 724–7678.

List of Subjects in 5 CFR Part 1701

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 5 of the Code of Federal Regulations be amended by adding Part 1701 as set forth at the end of this document.

Franklin A. Steinko, Jr.,

Budget and Management Officer.

PART 1701—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Authority: 29 U.S.C. 794.

DEPARTMENT OF ENERGY

10 CFR Part 1040

ADDRESS: Comments should be sent to Special Assistant for Civil Rights, U.S. Department of Energy, 1000 Independence Avenue, Washington, D.C. 20585. Mail Stop 4B–112.

FOR FURTHER INFORMATION CONTACT: Mr. Charles A. Agnew, Jr., U.S. Department of Energy, 1000 Independence Ave. SW., Room 4B–102, Voice: (202) 252–1549, TDD: (202) 724–7678, Washington, D.C. 20585.

List of Subjects in 10 CFR Part 1040

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 5 of the Code of Federal Regulations be amended by adding Subpart D to Part 1040 as set forth at the end of this document.

Charles A. Agnew, Jr.,

Special Assistant for Civil Rights.

PART 1040—[AMENDED]

Subpart D—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by Department of Energy

Authority: 29 U.S.C. 794.

OFFICE OF THE FEDERAL INSPECTOR FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

10 CFR Part 1535

ADDRESS: Comments should be sent to Rhodell G. Fields, Acting General Counsel, Office of the Federal Inspector for the Alaska Natural Gas Transportation System, 1200 Pennsylvania Avenue, N.W., Room 3411, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Rhodell G. Fields, 1200 Pennsylvania Avenue, N.W., Room 3411, Washington, D.C. 20044; (202) 275–1144 TDD: (202) 724–7678.

List of Subjects in 10 CFR Part 1535

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 10 of the Code of Federal Regulations be amended by adding Part 1535 as set forth at the end of this document.

Rhodell G. Fields,

Acting General Counsel.

PART 1535—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY OFFICE OF THE FEDERAL INSPECTOR FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Sec.

1535.101 Purpose.
1535.102 Application.
1535.103 1535 Definitions.
1535.104 1535–109 [Reserved]
1535.110 Self-evaluation.
1535.111–1535.129 [Reserved]
1535.130 General prohibitions against discrimination.
1535.131–1535.139 [Reserved]
1535.140 Employment.
1535.141–1535.149 [Reserved]
1535.150 Program accessibility: Existing facilities.
1535.151 Program accessibility: New construction and alterations.
1535.152–1535.159 [Reserved]
1535.160 Communications.
1535.161–1535.169 [Reserved]
1535.170 Compliance procedures.
1535.171–1535.999 [Reserved]

Authority: 29 U.S.C. 794.

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 410

ADDRESS: Comments should be sent to Warren W. Glick, General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue N.W., Washington, D.C. 20571.

FOR FURTHER INFORMATION CONTACT: Warren W. Glick, General Counsel, Voice (566–8334), TTY (566–8846).

List of Subjects in 12 CFR Part 410

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 12 of the Code of Federal Regulations be amended by adding Part 410 as set forth at the end of this document.

Warren W. Glick,

General Counsel.

PART 410—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY EXPORT-IMPORT BANK OF THE UNITED STATES

Sec.

410.101 Purpose.
410.102 Application.
410.103 Definitions.
410.104–410.109 [Reserved]
410.110 Self-evaluation.
410.111–410.129 [Reserved]
410.130 General prohibitions against discrimination.
410.131–410.139 [Reserved]
410.140 Employment.
410.141–410.149 [Reserved]
410.150 Program accessibility: Existing facilities.
410.151 Program accessibility: New construction and alterations.
410.152–410.159 [Reserved]
410.160 Communications.
410.161–410.169 [Reserved]
410.170 Compliance procedures.
410.171–410.999 [Reserved]

Authority: 29 U.S.C. 794.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1033

ADDRESS: Comments should be sent to: Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Robert T. Noonan, Office of General Counsel, Telephone (301)492–6980, TDD (800) 638–8270 National, (800) 492–8104 Md only.

List of Subjects in 16 CFR Part 1033

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 16 of the Code of Federal Regulatons be amended by adding Part 1033 as set forth at the end of this document.

Sadye E. Dunn,

Secretary.

PART 1033—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE CONSUMER PRODUCT SAFETY COMMISSION

Sec.

1033.101 Purpose.
1033.102 Application.
1033.103 Definitions.
1033.104–1033.109 [Reserved]
1033.110 Self-evaluation.
1033.111–1033.129 [Reserved]
1033.130 General prohibitions against discrimination.
1033.131–1033.139 [Reserved]
1033.140 Employment.
1033.141–1033.149 [Reserved]
1033.150 Program accessibility: Existing facilities.
1033.151 Program accessibility: New construction and alterations.
1033.152–1033.159 [Reserved]
1033.160 Communications.
1033.161–1033.169 [Reserved]
1033.170 Compliance procedures.
1033.171–1033.999 [Reserved]

Authority: 29 U.S.C. 794.

UNITED STATES INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

ADDRESS: Comments should be sent to: Mr. Terry P. Mc.Gowan, Room 166, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: Mr. Terry P. McGowan, Room 166, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0182. TDD (202)724–7678.

List of Subjects in 19 CFR Part 201

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 19 of the Code of Federal Regulatons be amended by adding Subpart G to Part 201 as set forth

at the end of this document.

Alfred Eckes,

Chairman.

PART 201—[AMENDED]

Part 201, Subpart G—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the U.S. International Trade Commission

Sec.
201.101 Purpose.
201.102 Application.
201.103 Definitions.
201.104–201.109 [Reserved]
201.110 Self-evaluation.
201.111–201.129 [Reserved]
201.130 General prohibitions against discrimination.
201.131–201.139 [Reserved]
201.140 Employment.
201.141–201.149 [Reserved]
201.1150 Program accessibility: Existing facilities.
201.1151 Program accessibility: New construction and alterations.
201.1152–201.159 [Reserved]
201.160 Communications.
201.161–201.169 [Reserved]
201.170 Compliance procedures.
201.171–201.999 [Reserved]

Authority: 29 U.S.C. 794.

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 219

ADDRESS: Comments should be sent to Office of Equal Opportunity Programs, Agency for International Development, Room 1226, SA–2, Washington, D.C. 20523.

FOR FURTHER INFORMATION CONTACT: Dennis Diamond, Office of Equal Opportunity Programs, Agency for International Development, Room 1226, SA–2, Washington, D.C. 20523 (202) 632–5766, TDD: (202) 724–7678.

List of Subjects in 22 CFR Part 219

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 22 of the Code of Federal Regulations be amended by adding Part 219 as set forth at the end of this document.

Nancy D. Frame,

Assistant General Counsel for Employee and Public Affairs, Office of the General Counsel

PART 219—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY AGENCY FOR INTERNATIONAL DEVELOPMENT, INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Sec.
219.101 Purpose.
219.102 Application.
219.103 Definitions.
219.104–219.109 [Reserved]
219.110 Self-evaluation.
219.111–219.129 [Reserved]
219.130 General prohibitions against discrimination.
219.131–219.139 [Reserved]
219.140 Employment.
219.141–219.149 [Reserved]
219.150 Program accessibility: Existing facilities.
219.151 Program accessibility: New construction and alterations.
219.152–219.159 [Reserved]
219.160 Communications.
219.161–219.169 [Reserved]
219.170 Compliance procedures.
219.171–219.999 [Reserved]

Authority: 29 U.S.C. 794.

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 607

ADDRESS: Comments should be sent to Equal Employment Opportunity Officer, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451.

FOR FURTHER INFORMATION CONTACT: F. Eugene Johnson, Room 5672A, 320 21st Street, NW., Washington, D.C. 20451, Telephone: Voice (202) 632–8666; TDD (202) 724–7678.

List of Subjects in 22 CFR Part 607

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 22 of the Code of Federal Regulations be amended by adding Part 607 as set forth at the end of this document.

William J. Montgomery,

Administrative Director.

PART 607—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY U.S. ARMS CONTROL AND DISARMAMENT AGENCY

Sec.
607.101 Purpose.
607.102 Application.
607.103 Definitions.
607.104–607.109 [Reserved]
607.110 Self-evaluation.
607.111–607.129 [Reserved]
607.130 General prohibitions against discrimination.
607.131–607.139 [Reserved]
607.140 Employment.
607.141–607.149 [Reserved]
607.150 Program accessibility: Existing facilities.
607.151 Program accessibility: New construction and alterations.
607.152–607.159 [Reserved]
607.160 Communications.
607.161–607.169 [Reserved]
607.170 Compliance procedures.
607.171–607.999 [Reserved]

Authority: 29 U.S.C. 794.

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO—UNITED STATES SECTION

22 CFR Part 1103

ADDRESS: Comments should be sent to International Boundary and Water Commission, United States and Mexico, United States Section, 4110 Rio Bravo Street, El Paso, Texas 79902.

FOR FURTHER INFORMATION CONTACT: Frank P. Fullerton, Legal Adviser, International Boundary and Water Commission, United States and Mexico, United States Section, 4110 Rio Bravo Street, El Paso, Texas 79902. Telephones: Commercial: (915) 541–7393, FTS: 572–7393, TDD: (202) 724–7678.

List of Subjects in 22 CFR Part 1103

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped,

Nondiscrimination, Physically handicapped.

It is proposed that Title 22 of the Code of Federal Regulations be amended by adding Part 1103 as set forth at the end of this document.

Frank P Fullerton,
Legal Adviser.

PART 1103—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO, UNITED STATES SECTION

Sec.
1103.101 Purpose.
1103.102 Application.
1103.103 Definitions.
1103.104–1103.109 [Reserved]
1103.110 Self-evalutation.
1103.111–1103.129 [Reserved]
1103.130 General prohibitions against discrimination.
1103.131–1103.139 [Reserved]
1103.140 Employment.
1103.141–1103.149 [Reserved]
1103.150 Program accessibility: Existing facilities.
1103.151 Program accessibility: New construction and alterations.
1103.152–1103.159 [Reserved]
1103.160 Communications.
1103.161–1103.169 [Reserved]
1103.170 Compliance procedures.
1103.171–1103.999 [Reserved]

Authority: 29 U.S.C. 794.

BOARD FOR INTERNATIONAL BROADCASTING

22 CFR Part 1304

ADDRESS: Comments should be sent to 1201 Connecticut Avenue, NW., Suite 1100, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathryn M. Harper, 1201 Connecticut Avenue, N.W., Suite 1100, Washington, D.C. 20036 Telephone: (202) 254–8040, TDD: (202) 724–7678.

List of Subjects in 22 CFR Part 1304

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 22 of the Code of Federal Regulations be amended by adding Part 1304 as set forth at the end of this document.

Walter R. Roberts,
Executive Director.

PART 1304—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE BOARD FOR INTERNATIONAL BROADCASTING

Sec.
1304.101 Purpose.
1304.102 Application.
1304.103 Definitions.
1304.104–1304.109 [Reserved]
1304.110 Self-evaluation.
1304.111–1304.129 [Reserved]
1304.130 General prohibitions against discrimination.
1304.131–1304.139 [Reserved]
1304.140 Employment.
1304.141–1304.149 [Reserved]
1304.150 Program accessibility: Existing facilities.
1304.151 Program accessibility: New construction and alterations.
1304.152–1304.159 [Reserved]
1304.160 Communications.
1304.161–1304.169 [Reserved]
1304.170 Compliance procedures.
1304.171–1304.999 [Reserved]

Authority: 29 U.S.C. 794.

AMERICAN BATTLE MONUMENTS COMMISSION

36 CFR Part 406

ADDRESS: Comments should be sent to Room 5127 Pulaski Bldg., 20 Massachusetts Ave., NW., Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Col. Clayton L. Moran (202) 272–0534, TDD: (202) 724–7678.

List of Subjects in 36 CFR Part 406

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 36 of the Code of Federal Regulations be amended by adding Part 406 as set forth at the end of this document.

Clayton L. Moran,
Colonel, FA, Director, Personnel and Administration.

PART 406—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY AMERICAN BATTLE MONUMENTS COMMISSION

Sec.
406.101 Purpose.
406.102 Application.
406.103 Definitions.
406.104–406.109 [Reserved]
406.110 Self-evaluation.
406.111–406.129 [Reserved]
406.130 General prohibitions against discrimination.
406.131–406.139 [Reserved]
406.140 Employment.
406.141–406.149 [Reserved]
406.150 Program accessibility: Existing facilities.
406.151 Program accessibility: New construction and alterations.
406.152–406.159 [Reserved]
406.160 Communications.
406.161–406.169 [Reserved]
406.170 Compliance procedures.
406.171–406.999 [Reserved]

Authority: 29 U.S.C. 794.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR Part 1175

ADDRESS: Comments should be sent to Old Post Office Building, Room 419, 1100 Pennsylvania Ave., N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Carol M. Gordon, Director, Office of Equal Opportunity (202) 786–0410, TDD: (202) 724–7678.

List of Subjects in 45 CFR Part 1175

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding Part 1175 as set forth at the end of this document.

William Bennett,
Chairman.

PART 1175—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL ENDOWMENT FOR THE HUMANITIES

Sec.
1175.101 Purpose.
1175.102 Application.
1175.103 Definitions.
1175.104–1175.109 [Reserved]
1175.110 Self-evaluation.
1175.111–1175.129 [Reserved]
1175.130 General prohibitions against discrimination.
1175.131–1175.139 [Reserved]
1175.140 Employment.
1175.141–1175.149 [Reserved]
1175.150 Program accessibility: Existing facilities.

Authority: 29 U.S.C. 794.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services

45 CFR Part 1181

ADDRESS: Comments should be sent to: Institute of Museum Services, Old Post Office Building, Room 510, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Institute of Museum Services (202) 786–0536, TDD: (202) 724–7678.

List of Subjects in 45 CFR Part 1181

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding Part 1181 as set forth at the end of this document.

Susan E. Phillips,

Director, Institute of Museum Services.

PART 1181—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE INSTITUTE OF MUSEUM SERVICES

Authority: 29 U.S.C. 794.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

45 CFR Part 1706

ADDRESS: Comments should be sent to Dr. Sarah G. Bishop, Deputy Director, GSA ROB 7th and D Streets, S.W., Suite 3122, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Sarah G. Bishop (202) 382–0840 (Voice) or (202) 724–7678 (TDD).

List of Subjects in 45 CFR Part 1706

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 45 of the Code of Federal Regulations be amended by adding Part 1706 as set forth at the end of this document.

Toni Carbo Bearman,

Executive Director.

PART 1706—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Authority: 29 U.S.C. 794.

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 807

ADDRESS: Comments should be sent to: John M. Stuhldreher, General Counsel, National Transportation Safety Board, 800 Independence Avenue, S.W., Washington, D.C. 20594.

FOR FURTHER INFORMATION CONTACT: John M. Stuhldreher, General Counsel, National Transportation Safety Board, Washington, D.C. 20594; (202–382–6540). (TDD 202–724–7678).

List of Subjects in 49 CFR Part 807

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

It is proposed that Title 49 of the Code of Federal Regulations be amended by adding Part 807 as set forth at the end of this document.

Patricia A. Goldman,

Vice Chairman.

PART 807—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL TRANSPORTATION SAFETY BOARD

Authority: 29 U.S.C. 794.

MARINE MAMMAL COMMISSION

50 CFR Part 550

ADDRESS: Comments should be sent to John R. Twiss, Jr., Executive Director, Marine Mammal Commission, Room 307, 1625 I Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, Room 307, 1625 I Street, N.W., Washington, D.C. 20006; (202) 653–6237. TDD: (202) 724–7678.

List of Subjects in 50 CFR Part 550

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped,

Nondiscrimination, Physically handicapped.

It is proposed that Title 50 of the Code of Federal Regulations be amended by adding Part 550 as set forth at the end of this document.

John R. Twiss, Jr.,
Executive Director.

PART 550—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY MARINE MAMMAL COMMISSION

Authority: 29 U.S.C. 794.

Part —— —ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY

Authority: 29 U.S.C. 794.

§ ——.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ ——.102 Application.

This part applies to all programs or activities conducted by the agency.

§ ——.103 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunication devices, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's) interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; Special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that would result in a fundamental alteration in its nature; and

(2) With respect to any other program or activity, a handicapped person who meets the essential eligiblility requirements for participation in, or receipt of benefits from, that program or activity.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§ ——.104——.109 [Reserved]

§ ——.110 Self-evaluation.

Within one year of the effective date of this part, the agency shall conduct, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, a self-evaluation of its compliance with section 504.

§ ——.111——.129 [Reserved]

§ ——.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) This agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ ——.131——.139 [Reserved]

§ ——.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§ ——.141——.149 [Reserved]

§ ——.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicappd persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ ——.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered, by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act, 42 U.S.C. 4151–4157, as established in 41 CFR 101.600 to 101.607, apply to buildings covered by this section.

§ ——.152——.159 [Reserved]

§ ——.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) The agency shall take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the agency's programs or activities.

(e) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§——.161——.169 [Reserved]

§——.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The head of the agency shall designate an official to be responsible for coordinating implementation of this section.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 22), is not readily accessible and usable to handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §——.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make its determination on the appeal.

(k) The time limits cited in (g) and (j) above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§——.171——.999 [Reserved]

[FR Doc. 84-656 Filed 1-10-84; 8:45 am]

BILLING CODES 6110-01-M, 6820-43-M, 6115-01-M, 6450-01-M, 6119-01-M, 6890-01-M, 7020-02-M, 6355-01-M, 6820-32-M, 4710-03-M, 6155-01-M, 6120-01-M, 7530-01-M

Federal Register

Wednesday
January 11, 1984

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 904

Civil Procedures—Ability to Pay; Interim Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 904

[Docket No. 31025-206]

Civil Procedures—Ability to Pay

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Interim final rule.

SUMMARY: The National Oceanic and Atmospheric Administration adopts uniform policies and procedures for taking into account the ability of a person, charged with violating one of the laws NOAA enforces, to pay a civil penalty. The rule defines the manner and context in which NOAA will consider the ability of a person to pay a civil penalty, and makes explicit the responsibilities of a person to provide timely and relevant financial information.

DATES: This regulation is effective on January 11, 1984. Comments must be submitted on or before April 10, 1984.

ADDRESSES: Interested persons are invited to submit written comments to the NOAA Office of General Counsel (GCEL), Room 275, Page 1 Building, 2001 Wisconsin Avenue, N.W., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Amy Svoboda (202) 254–8350.

SUPPLEMENTARY INFORMATION:

Discussion

The Magnuson Fishery Conservation and Management Act, the Ocean Thermal Energy Conversion Act, the Northern Pacific Halibut Act, and the Lacey Act Amendments of 1981 require that the NOAA Administrator take into account, among other factors, a violator's ability to pay a penalty when deciding how much the penalty should be. In the interest of dealing equitably with violators of other NOAA-enforced laws, this regulation provides that NOAA will consider ability to pay when exercising its authority to assess civil penalties under all NOAA-enforced statutes. The other NOAA-enforced statutes are listed in Section 904.100.

The ability of a person to pay a penalty has already been taken into account to a certain extent when the agency devises penalty schedules for each fishery. This regulation describes the method in which the ability to pay factor is taken into account in assessing a penalty for a particular individual.

The Administrator is required to consider ability to pay only when assessing a civil penalty, not when remitting or mitigating a penalty after it has been assessed in a final agency action or when collecting a penalty. Therefore, except as provided in § 904.108(f)(1), this regulation leaves up to the discretion of the Administrator whether a person's ability to pay will be considered in mitigation, remission or collection of a penalty.

Section 904.108(b) points out that the ability of a violator to pay a penalty is only one of eight factors that the Administrator must consider when assessing a penalty. The ability to pay factor is to be balanced with the other factors listed in that section.

Section 904.108(c) reflects NOAA's understanding that "ability to pay" may refer to either a violator's inability to pay a penalty amount warranted by other factors; or a violator's ability to pay a penalty amount that is higher than otherwise warranted, so that a penalty will deter future violations and not be incorporated as a cost of doing business.

Section 904.108(d) explains that, to have a basis upon which to consider a person's inability to pay a penalty, the Administrator must be provided with a complete and accurate picture of the violator's assets and liabilities. The Administrator does not maintain records on the financial status of potential violators, nor does he or she have subpoena power in all statutes to obtain such information from a violator. Therefore, if a violator believes that he or she does not have the ability to pay the amount of the proposed penalty, the violator has the responsibility to fill out and return financial information requests and interrogatories available from the particular Office of General Counsel that issued the notice of violation and assessment. Absent contrary information in the record, the rule provides that the violator is presumed able to pay the penalty.

Section 904.108(d) also requires that the violator provide verification of the submitted financial information from an independent source such as an auditor, accountant, banker, or title company, if the Administrator requests it.

Section 904.108(e) points out that the information that NOAA considers relevant to a violator's ability to pay includes more than a violator's cash and liquid assets. It states NOAA's position that an individual has the ability to pay a penalty if he or she can pay in installments over time, borrow money, liquidate assets, or reorganize a business.

Section 904.108(e) also recognizes that there may be instances in which other factors, such as egregiousness of the violation, damage to the resource, or recalcitrance of the violator, outweigh the ability to pay factor such that the Administrator will impose a penalty that could contribute to a violator's bankruptcy or discontinuation of his or her business.

Section 904.108(f) describes the time within which a violator's financial information must be brought to the attention of the Administrator.

Section 904.108(g) provides that all information relating to a violator's ability to pay will not be considered for the first time by the Administrator in an administrative review of an initial decision. This will allow any issues involving ability to pay, if appealed, to have been thoroughly explored by the parties before an administrative law judge.

Section 904.108(h)(1) requires a petitioner for remission or mitigation to submit his or her petition within 30 days of a final agency decision or order if the petition relates to the issue of petitioner's ability to pay.

Section 904.108(h)(2) waives the Administrator's discretion described in 904.108(a) in one instance. It provides that if a respondent petitions for remission or mitigation of a penalty assessed by the ALJ in an initial decision which is substantially greater than the one assessed in the Notice of Violation and Assessment (NOVA), and the respondent did not submit ability to pay information at the hearing relative to the greater amount assessed by the ALJ, the Administrator will take into account the respondent's ability to pay information submitted in the petition.

Classification

The National Oceanic and Atmospheric Administration (NOAA) has determined that these rules are not major rules as defined by Executive Order 12291, "Federal Regulations."

Because these regulations only establish agency procedure and practice, they are exempt from the Regulatory Flexibility Act requirements of regulatory analysis.

These regulations are categorically excluded by NOAA Directive 02–10 from preparation of an environmental analysis under the National Environmental Policy Act of 1969.

Because any information collected under this regulation will be collected pursuant to an administrative action or investigation involving the agency against specific individuals or entities, these regulations are excluded from the requirements of the Paperwork Reduction Act in accordance with 5 CFR 1320.3(c).

List of Subjects in 15 CFR Part 904

Administrative practice and procedure, Penalties.

Signed at Washington, D.C. this 28th day of December 1983.

Samuel A. Lawrence,

Director, Office of Administrative and Technical Services, NOAA.

PART 904—[AMENDED]

15 CFR Part 904 is amended by adding § 904.108 to Subpart B, to read as follows:

Subpart B—Civil Penalties

§ 904.108 Ability to pay

(a) *Scope.* (1) The Administrator shall take into account a respondent's ability to pay when assessing a civil penalty for a violation of one of the statutes NOAA administers, including those listed in § 904.100(a)(1).

(2) For penalties that have become final agency actions in accordance with § 904.104, the Administrator may, in his or her discretion, also consider ability to pay in ruling on a petition for remission or mitigation or in collecting an unpaid civil penalty (but see § 904.108(h)(1)).

(b) *Relation to other factors.* The ability of a person to pay a penalty is only one of a number of factors to be taken into account in assessing a penalty. Other factors, depending upon the statute in question, may include the nature, circumstances, extent, and gravity of the alleged violation; with respect to the respondent, the degree of culpability and any history of prior offenses; and such other matters as justice may require. The Administrator must balance a respondent's ability to pay with the other relevant factors when determining the appropriate amount of a penalty.

(c) *Use of ability to pay factor.* The Administrator may, in consideration of a respondent's ability to pay, increase or decrease a penalty from an amount that would otherwise be warranted by the other relevant factors listed in paragraph (b) of this section. A penalty may be increased if a respondent's ability to pay is such that a higher penalty is necessary to deter future violations, or for commercial violators, to make a penalty more than a cost of doing business. A penalty may be decreased if the respondent establishes that he or she is unable to pay an otherwise appropriate penalty amount.

(d) *Respondent's burden to prove inability.* If a respondent asserts that a penalty should be reduced because of inability to pay, the respondent has the burden of proving such inability by providing a complete and accurate financial statement to the Administrator. An evaluation of a respondent's financial situation will not be undertaken until the respondent, if requested, completes a financial information request form, answers written interrogatories, and submits verification of his or her financial information from an independent source. If a respondent does not submit the requested financial information, the respondent will be presumed to have the ability to pay the penalty.

(e) *Relevant financial information.* Financial information relevant to a respondent's ability to pay includes, but is not limited to, the value of a respondent's cash and liquid assets, ability to borrow, net worth, liabilities, income, prior and anticipated profits, expected cash flow, and the respondent's ability to pay in installments over time. A respondent will be considered able to pay a penalty even if he or she must take such actions as pay in installments over time, borrow money, liquidate assets, or reorganize his or her business. The Administrator's consideration of a respondent's ability to pay does not preclude an assessment of a penalty in an amount that would cause or contribute to the bankruptcy or other discontinuation of the respondent's business.

(f) *When information must be submitted.* Financial information regarding respondent's ability to pay should be submitted to the Office of General Counsel as soon after receipt of the Notice of Violation and Assessment (NOVA) as possible. If a respondent has requested a hearing on the offense alleged in the NOVA and wants his or her ability to pay considered in the initial decision of the Administrative Law Judge (ALJ), the financial information to be presented to the ALJ must be submitted to the Office of General Counsel at least 10 days in advance of the hearing.

(g) *Administrative review.* Issues regarding ability to pay will not be considered in an administrative review of an initial decision if the financial information was not previously presented by the respondent to the ALJ at the hearing.

(h) *Remission or mitigation.* (1) A petition for remission or mitigation which is based, wholly or in part, on a respondent's ability to pay a penalty must be submitted within 30 days of a final administrative decision and order of the Administrator as defined in § 904.104 and § 904.272.

(2) If a penalty assessed in the NOVA is substantially increased by the ALJ in an initial decision and the respondent did not submit ability to pay information relative to the greater amount assessed by the ALJ, the Administrator will consider ability to pay in a petition for remission or mitigation, notwithstanding the discretion reserved to the Administrator in paragraph (a)(2) of this section.

[FR Doc. 84-13 Filed 1-10-84; 8:45 am]

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