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# federal register

Friday
June 8, 1990

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

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 3 hours) to present:
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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

### MINNEAPOLIS, MN

**WHEN:** June 18, at 1:00 p.m.,
**WHERE:** Bishop Henry Whipple Federal Building, Room 570, Ft. Snelling, MN.
**RESERVATIONS:** 1-800-366-2998.

### KANSAS CITY, MO

**WHEN:** June 19, at 9:00 a.m.,
**WHERE:** Federal Building, 601 East 12th Street, Room 110, Kansas City, MO.
**RESERVATIONS:** 1-800-735-8004.

### WASHINGTON, DC

**WHEN:** June 28, at 9:00 a.m.,
**WHERE:** Office of the Federal Register, First Floor Confernce Room, 1100 L Street NW., Washington, DC.
**RESERVATIONS:** 202-523-5240.

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# Presidential Documents

Title 3—

## The President

Proclamation 6143 of June 5, 1990

## National Fishing Week, 1990

By the President of the United States of America

A Proclamation

Each year, more than 60 million Americans engage in recreational fishing. For these Americans, fishing is a peaceful and rewarding way to spend time alone or in the company of family and friends. For many other Americans, however, fishing is not only a deeply enjoyed activity, but also their livelihood.

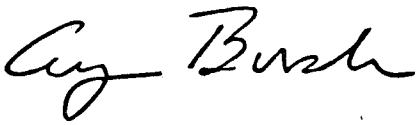
The members of our Nation's sport and commercial fishing industries make significant contributions to our economy and to our high standard of living. Commercial fishermen help to supply us with a variety of seafood. Each year, the recreational fishing industry contributes billions of dollars to the economy.

Whether it is their full-time occupation or simply their favorite pastime, those Americans who fish on our Nation's lakes, streams, and other territorial waters have also made important contributions to environmental protection. Over the years, anglers have worked together with Federal, State, and local officials to protect and enhance fisheries and to encourage responsible fishing practices. Our Nation's public investment in fishery conservation, restoration, and enhancement is, in large part, paid for by fishermen through licensing, excise taxes, and user fees. These efforts help to ensure that our Nation's fisheries remain a bountiful and renewable natural resource.

As anglers have clearly shown us, cooperation between individual citizens and government fosters a sense of shared pride and responsibility—key elements of successful environmental stewardship. During National Fishing Week, we join in acknowledging the value of America's marine and freshwater resources, and we renew our commitment to protecting our fisheries for the sake of future generations.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of June 4 through June 10, 1990, as National Fishing Week. I invite all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of June, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 90-13453
Filed 6-6-90; 2:18 pm]
Billing code 3195-01-M

# Rules and Regulations

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 55

[Docket No. PY-90-003]

### Office of Management and Budget Information Collection Control Number

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the regulations for voluntary inspection of egg products and grading. It updates the information collection requirements contained in 7 CFR part 55 and the control number assigned to such requirements by the Office of Management and Budget (OMB).

**EFFECTIVE DATE:** June 8, 1990.

**FOR FURTHER INFORMATION CONTACT:** Janice L. Lockard, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 3944, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202/447-3506).

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12291

The Agency has determined that this amendment is merely administrative and is not subject to the requirements of Executive Order 12291. It involves only the identification of information collection requirements and display of OMB control numbers pursuant to 5 CFR part 1320.

#### Administrative Procedure Act

Because of its technical non-substantive nature, this amendment is not subject to the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), nor do the provisions of section 553(d) of that Act apply. Therefore, the Department finds that notice and opportunity for comment are unnecessary and that, upon good cause, this amendment should be effective on the date of publication of this rule in the **Federal Register**.

#### Regulatory Flexibility Act

For these same reasons, an analysis or certification under the Regulatory Flexibility Act is not required.

#### Paperwork Reduction Act

This rulemaking does not require an additional collection of information from the public under the Paperwork Reduction Act of 1980.

#### Background

The Paperwork Reduction Act of 1980 was designed both "to minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons" and "to maximize the usefulness of information collected by the Federal government." Provisions of the Paperwork Reduction Act of 1980 are implemented in 5 CFR part 1320.

Among other provisions, the rule requires the display of OMB control numbers assigned to information collection requirements contained in Agency rules. The control numbers provide a simple and effective way for the public to tell whether a paperwork burden an agency seeks to impose has been cleared as required.

Each information collection requirement in the regulation is reviewed and evaluated periodically. In addition, every 3 years the Agency submits such requirements to OMB for review and extension of approval. Current OMB approval of the information collection requirements under 7 CFR part 55 would have expired December 31, 1989. Prior to that, the Agency submitted a revised clearance docket to OMB. A notice of the OMB review was published October 13, 1989 (54 FR 197), and subsequently, the clearance docket for 7 CFR part 55 was approved by OMB. Therefore, section 55.25 of 7 CFR part 55 is updated by deleting three section numbers (55.50, 55.60, 55.350) inadvertently displayed as containing information collection requirements.

The Agency has determined that this amendment is not substantive. It merely provides a convenient and current listing of the information collection requirements and OMB control numbers in accordance with 5 CFR part 1320.

#### List of Subjects in 7 CFR Part 55

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements, Voluntary inspection service.

For reasons set out in the preamble and under authority contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), title 7, part 55 of the Code of Federal Regulations, is amended as follows:

## PART 55—VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING

1. The authority citation for part 55 continues to read as follows:

**Authority:** Secs. 202-208 of the Agricultural Marketing Act of 1946, as amended, (60 Stat. 1087-1091; 7 U.S.C. 1621-1627).

2. Section 55.25 is amended by revising paragraph (b) to read as follows:

**§ 55.25 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

* * * * *

(b) *Display.*

| 7 CFR section where identified and described | Current OMB control number |
|---|---|
| § 55.10 | 0581-0146 |
| § 55.24(a) | 0581-0146 |
| § 55.30(a) | 0581-0146 |
| § 55.40 | 0581-0146 |
| § 55.90(b) | 0581-0146 |
| § 55.95(b) | 0581-0146 |
| § 55.96 | 0581-0146 |
| § 55.120 | 0581-0146 |
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| § 55.560(b)(3)(ii) | 0581-0146 |
| § 55.600 | 0581-0146 |

Done at Washington, DC, on May 31, 1990.

**Daniel D. Haley,**

*Administrator.*

[FR Doc. 90-13287 Filed 06-07-90; 8:45 am]

BILLING CODE 3410-02-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 81

**RIN 3150-AD54**

### Standard Specifications for the Granting of Patent Licenses

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations regarding Office of Management and Budget (OMB) clearance pursuant to the Paperwork Reduction Act of 1980. This action is necessary to inform the public that OMB clearance has been obtained for the information collection requirements contained in 10 CFR part 81 under control number 3150-0121.

**EFFECTIVE DATE:** June 8, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ronald M. Smith, Senior Attorney, Division of Rulemaking and Fuel Cycle, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-1640.

**SUPPLEMENTARY INFORMATION:** The OMB regulations which implement the Paperwork Reduction Act, 5 CFR part 1320, provide in pertinent part that "ten or more persons" are deemed to be involved when a recordkeeping or reporting requirement is contained in a rule of general applicability. See 5 CFR 1320.7(s)(1). The NRC previously has obtained OMB clearance for the collection requirements in 10 CFR part 81 under control number 3150-0121. Accordingly, § 81.8 is being revised to correctly indicate this fact.

Because this is an amendment dealing with agency practice and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendment is effective upon publication in the Federal Register. Good cause exists to dispense with the usual 30-day delay in the effective date because the amendment is of a minor and administrative nature dealing with the announcement of the clearance number under which OMB has approved the information collection requirements contained in 10 CFR part 81.

**Environmental Impact: Categorical Exclusion**

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

**Paperwork Reduction Act Statement**

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0121.

**Backfit Analysis**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this final rule, because this amendment does not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

**List of Subjects in 10 CFR Part 81**

Administrative practice and procedure, Inventions and patents.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 81.

### PART 81—STANDARD SPECIFICATIONS FOR THE GRANTING OF PATENT LICENSES

1. The authority citation for part 81 continues to read as follows:

Authority: Sec. 156, 161, 68 Stat. 947, 948, as amended (42 U.S.C. 2186, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. Section 81.8 is revised to read as follows:

**§ 81.8 Reporting, recordkeeping, and application requirements: OMB approval.**

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements contained in this part under control number 3150-0121.

(b) The approved information collection requirements contained in this part appear in §§ 81.20, 81.32, and 81.40.

Dated at Rockville, Maryland, this 1st day of June, 1990.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Executive Director for Operations.*

[FR Doc. 90-13327 Filed 6-7-90; 8:45 am]

BILLING CODE 7590-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 89-ASW-70]**

### Establishment of Transition Area: Sallisaw, OK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action will establish a transition area at Sallisaw, OK. The development of a new standard instrument approach procedure (SIAP) to the Sallisaw Municipal Airport, utilizing the new Sallisaw Nondirectional Radio Beacon (NDB), has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for aircraft executing the new SIAP. Coincident with this action is the changing of the status of the Sallisaw Municipal Airport from visual flight rules (VFR) to instrument flight rules (IFR).

**EFFECTIVE DATE:** 0901 u.t.c., August 23, 1990.

**FOR FURTHER INFORMATION CONTACT:** Bruce C. Beard, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

**SUPPLEMENTARY INFORMATION:**

**History**

On February 5, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area at Sallisaw, OK (55 FR 5624).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in

Handbook 7400.6F, dated January 2, 1990.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations will establish a transition area at Sallisaw, OK. The development of a new SIAP to the Sallisaw Municipal Airport, utilizing the new Sallisaw NDB, has made this action necessary. The initial south arrival extension was described in the notice as being "1.5 miles each side of the 168° bearing of the Sallisaw NDB." The correct bearing should be the 165° bearing of the Sallisaw NDB. This minor correction is reflected in the Sallisaw, OK, Transition Area legal description. The intended effect of this action is to provide adequate controlled airspace for aircraft executing the new SIAP. Coincident with this action is the changing of the status of the Sallisaw Municipal Airport from VFR to IFR.

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

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**Adoption of the Amendment**

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

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

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

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

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Sallisaw, OK [Revised]**

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Sallisaw Municipal Airport (latitude 35°26'18" N., longitude 94°48'08" W.), and within 1.5 miles each side of the 165° bearing of the Sallisaw NDB (latitude 35°23'55" N., longitude 94°47'39" W.), extending from the 6.5-mile radius area to 9 miles south of the Sallisaw Municipal Airport.

Issued in Fort Worth, TX, on May 21, 1990.

**Larry L. Craig,**

*Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 90-13307 Filed 6-7-90; 8:45 am]

BILLING CODE 4910-13-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 558

### New Animal Drugs for Use in Animal Feeds; Lincomycin

**AGENCY:** Food and Drug Administration, HHS.

**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 The Upjohn Co. The supplement provides for the following changes concerning use of lincomycin in Type C swine feed at the 20- and 40-gram-per-ton levels: (1) In 21 CFR 558.4, removing the entry for lincomycin from the Category II table and adding it to the Category I table, and (2) in 21 CFR 558.325, removing the 6-day preslaughter drug withdrawal requirement.

**EFFECTIVE DATE:** June 8, 1990.

**FOR FURTHER INFORMATION CONTACT:** James F. McCormack, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

**SUPPLEMENTARY INFORMATION:** The Upjohn Co., Kalamazoo, MI 49001, is the sponsor of NADA 97-505. The NADA provides for use of lincomycin hydrochloride, supplied as Type A medicated articles (Lincomix 20 and Lincomix 50), to be incorporated into Type B or Type C medicated swine feeds containing 40 grams of lincomycin hydrochloride per ton of feed for control of swine dysentery and 20 grams per ton for increased rate of weight gain in growing-finishing swine. Both use levels currently have a 6-day drug withdrawal requirement. The firm has submitted a supplemental NADA that contains sufficient safety data to support removing the 6-day preslaughter drug withdrawal requirement and the granting of a zero withdrawal period only at these two levels and uses. Accordingly, the supplement is approved as of June 1, 1990, and 21 CFR 558.325(c)(2)(i)(*b*), (c)(2)(ii)(*b*), and (c)(2)(v)(*b*) is amended to reflect the approval.

Granting a zero withdrawal period for use of lincomycin in swine at 20 and 40 grams per ton means there no longer exists withdrawal requirements for lincomycin alone at the lowest use levels in either of the two species (broiler chickens and swine) for which it is currently approved. Therefore, lincomycin is no longer a Category II drug. Thus, § 558.4(d) is amended by removing lincomycin from the Category II table and adding it to the Category I table. Consequently, the form FDA 1900's approved on the basis of the former status of these two Type C medicated feeds are deemed to have been withdrawn.

Under FDA's interpretation of the Generic Animal Drug and Patent Term Restoration Act, this supplemental application does not qualify for exclusivity. (See FDA's third policy letter, notice of availability of such published in the **Federal Register** of August 28, 1989 (54 FR 35534).)

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

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.4 is amended in paragraph (d) in the Category I table by alphabetically adding a new entry for "Lincomycin" and in the Category II table by removing the entry for "Lincomycin" to read as follows:

**§ 558.4 Medicated feed applications.**

* * * * *

(d) * * *

CATEGORY I

| Drug | Assay limits percent [1] type A | Type B maximum (200×) | Assay limits percent [1] type B/C [2] |
|---|---|---|---|
| * | * | * | * |
| Lincomycin..... | 90–115 | 20.0 g/lb (4.4%). | 80–130 |
| * | * | * | * |

[1] Percent of labeled amount.
[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make Type C medicated feed.

* * * * *

**§ 558.325 [Amended]**

3. Section 558.325 *Lincomycin* is amended in paragraph (c)(2)(i)(*b*) by removing the semicolon and "withdraw 6 days before slaughter", in paragraph (c)(2)(ii)(*b*) by removing the semicolon and "withdraw 6 days before slaughter" and replacing in with "feed containing 100 grams per ton lincomycin hydrochloride should be withdrawn 6 days before slaughter", and in paragraph (c)(2)(v)(*b*) by removing the semicolon and "withdraw 6 days before slaughter."

Dated: June 1, 1990.

**Robert Furrow,**

*Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 90-13317 Filed 6-7-90; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF STATE

## 22 CFR Part 35

[Public Notice 1217]

RIN 1400-AA13

## Program Fraud Civil Remedies Regulations

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State is promulgating as a final rule regulations to implement the Program Fraud Civil Remedies Act of 1986. The final rule establishes administrative procedures for imposing the statutorily authorized civil penalties and assessments against any person who makes, submits, or presents a false, fictitious, or fraudulent claim or written statement to the Department.

**EFFECTIVE DATE:** June 8, 1990.

**FOR FURTHER INFORMATION CONTACT:** Jean Bailly, Office of the Legal Adviser, (202) 647-2350.

**SUPPLEMENTARY INFORMATION:** The Program Fraud Civil Remedies Act established a new administrative procedure as a remedy against those who knowingly make false claims or statements. The statute requires Federal agencies to follow certain procedures to recover penalties, and assessments against persons who file false claims or statements. It provides for designated investigative and reviewing officials, an administrative hearing process, and an agency appeal procedure with limited judicial review. The President's Council on Integrity and Efficiency developed draft model regulations in order to facilitate and promote uniformity in implementing the new procedure. The State Department, with minor variations, has adopted the model regulations.

The Department published a notice of proposed rulemaking on this subject in the **Federal Register** on November 3, 1989 (54 FR 46405). No substantive comments were received, and the final rule contains no substantive changes from the proposed rule.

Consistent with the statute's requirements, the Department's final regulations provide that the Inspector General will act as the Investigating Official; the Chief Financial Officer of the Department will act as Reviewing Official; an administrative law judge will be the Presiding Official; and the Under Secretary for Management will act as Authority Head on appeals. The new administrative process should serve to deter fraud in cases where costs of litigation formerly made it uneconomical to press such claims, and should give the Department an effective remedy against persons submitting false claims to the Department.

The final rules will have no direct effect on the economy, or on Federal or State expenditures, and thus do not constitute a "major rule" within the meaning of section 1(b) of Executive Order 12291. Consequently, we have concluded that an initial regulatory impact analysis is not required. Nor do the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b) apply. The final rules contain no information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1978, and fall within the exceptions to coverage.

**List of Subjects in 22 CFR Part 35**

Administrative practice and procedure, Claims, Fraud, Penalties.

Accordingly, title 22, chapter I of the Code of Federal Regulations is amended to add part 35 to read as follows:

## PART 35—PROGRAM FRAUD CIVIL REMEDIES

Sec.

35.1 General.
35.2 Definitions.
35.3 Basis for civil penalties and assessments.
35.4 Investigation.
35.5 Review by the reviewing official.
35.6 Prerequisites for issuing a complaint.
35.7 Complaint.
35.8 Service of complaint.
35.9 Answer.
35.10 Default upon failure to file an answer.
35.11 Referral of complaint and answer to the ALJ.
35.12 Notice of hearing.
35.13 Parties to the hearing.
35.14 Separation of functions.
35.15 Ex parte contacts.
35.16 Disqualification of reviewing official or ALJ.
35.17 Rights of parties.
35.18 Authority of the ALJ.
35.19 Prehearing conferences.
35.20 Disclosure of documents.
35.21 Discovery.
35.22 Exchange of witness lists, statements and exhibits.
35.23 Subpoenas for attendance at hearing.
35.24 Protective order.
35.25 Fees.
35.26 Form, filing and service of papers.
35.27 Computation of time.
35.28 Motions.
35.29 Sanctions.
35.30 The hearing and burden of proof.
35.31 Determining the amount of penalties and assessments.
35.32 Location of hearing.
35.33 Witnesses.
35.34 Evidence.
35.35 The record.

Sec.
35.36 Post-hearing briefs.
35.37 Initial decision.
35.38 Reconsideration of initial decision.
35.39 Appeal to authority head.
35.40 Stays ordered by the Department of Justice.
35.41 Stay pending appeal.
35.42 Judicial review.
35.43 Collection of civil penalties and assessments.
35.44 Right to administrative offset.
35.45 Deposit in Treasury of United States.
35.46 Compromise or settlement.
35.47 Limitations.

Authority: 31 U.S.C. 3801–3812.

**§ 35.1 General.**

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Public Law 99–509, sections. 6101–6104, 100 Stat. 1874 (October 21, 1986), codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false fictitious, or fraudulent claims or written statements to authorities or to their agents; and specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

(c) *Special considerations abroad.* Where a party, witness or material evidence in a proceeding under these regulations is located abroad, the investigating official, reviewing official or ALJ, as the case may be, may adjust the provisions below for service, filing of documents, time limitations, and related matters to meet special problems arising out of that location.

**§ 35.2 Definitions.**

(a) *ALJ* means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

(b) *Authority* means the United States Department of State.

(c) *Authority head* means the Under Secretary for Management.

(d) *Benefit* means, in the context of "statement," anything of value, including but not limited to, any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan gurarantee.

(e) *Claim* means any request, demand, or submission—

(1) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(2) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(i) For property or services if the United States—

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance or benefits) if the United States—

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services or money.

(f) *Complaint* means the administrative complaint served by the reviewing official on the defendant under § 35.7.

(g) *Defendant* means any person alleged in a complaint under § 35.7 to be liable for a civil penalty or assessment under § 35.3.

(h) *Department* means the Department of State.

(i) *Government* means the United States Government.

(j) *Individual* means a natural person.

(k) *Initial decision* means the written decision of the ALJ required by § 35.10 or § 35.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

(l) *Investigating official* means the Inspector General of the Department of State or an officer or employee of the Office of Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(m) *Knows or has reason to know* means that a person, with respect to a claim or statement—

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

(n) *Makes,* wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made,* shall likewise include the corresponding forms of such terms.

(o) *Person* means any individual, partnership, corporation, association or private organization, and includes the plural of the term.

(p) *Representative* means an attorney who is a member in good standing of the bar of any state, territory, or possession of the United States, or of the District of Columbia, or the Commonwealth of Puerto Rico.

(q) *Representative for the Authority* means the Counsel to the Inspector General.

(r) *Reviewing official* means the chief Financial Officer of the Department or her or his designee who is—

(1) Not subject to supervision by, or required to report to, the investigating official;

(2) Not employed in the organizational unit of the authority in which the investigating official is employed; and

(3) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(s) *Statement* means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan or benefit from, the authority, or any state, political subdivision of a state, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such state, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

**§ 35.3 Basis for civil penalties and assessments.**

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know the following shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim:

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a

material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making the statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any state or political subdivision thereof, acting for or on behalf of the authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a mateial fact that the person making the statment has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any state or political subdivision thereof, acting for or on behalf of the authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

**§ 35.4 Investigation.**

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued (and, in the case of a subpoena to be served outside the jurisdiction of the United States, the basis for such service), and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefore, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to preclude or limit such official's discretion to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

**§ 35.5 Review by the reviewing official.**

(a) If, based on the report of the investigating official under § 35.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 35.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 35.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 35.3;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

**§ 35.6 Prerequisites for issuing a complaint.**

(a) The reviewing official may issue a complaint under § 35.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1); and

(2) In the case of allegations of liability under § 35.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 35.3(a) does not exceed $150,000.

(b) For purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person's claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

**§ 35.7 Complaint.**

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 35.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal, as provided in § 35.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

**§ 35.8 Service of complaint.**

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt;

(3) Written acknowledgment of receipt by the defendant or his or her representative; or

(4) In case of service abroad authenticated in accordance with the Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters.

**§ 35.9 Answer.**

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official shall file promptly with the ALJ the complaint, the general answer denying liability, and the request for an extension of time as provided in § 35.10. For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

**§ 35.10 Default upon failure to file an answer.**

(a) If the defendant does not file an answer within the time prescribed in § 35.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 35.8, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to answer, the ALJ shall assume the facts alleged in the complaint to be true, and, if such facts established liability under § 35.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it was issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 35.38.

(h) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(i) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(j) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

**§ 35.11 Referral of complaint and answer to the ALJ.**

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

**§ 35.12 Notice of hearing.**

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 35.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Authority.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

**§ 35.13 Parties to the hearing.**

(a) The parties to the hearing shall be the defendant and the Authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

**§ 35.14 Separation of functions.**

(a) The investigating official, the reviewing official, and any employee or agent of the authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

**§ 35.15 Ex parte contacts.**

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

**§ 35.16 Disqualification of reviewing official or ALJ.**

(a) A reviewing official or ALJ in a particular case may disqualify herself or himself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objects shall be deemed waived

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(3) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disq ualification in accordance with paragraph (f) of this section.

(e) If the ALJ—

(1) Determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice;

(2) Disqualifies himself or herself, the case shall be reassigned promptly to another ALJ; or

(3) Denies a motion to disqualify, the authority head may determine the mater only as part of his or her review of the initial decision upon appeal, if any.

**§ 35.17 Rights of parties.**

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oreal arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

**§ 35.18 Authority of the ALJ.**

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas to be served within the United States requiring the attendance of witnesses and the production of documents at depositions or at hearings. Subpoenas to be served outside the jurisdiction of the United States shall state on their face the authority therefore;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find treaties and other international agreements or federal statutes or regulations invalid.

**§ 35.19 Prehearing conferences.**

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

**§ 35.20 Disclosure of documents.**

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 35.4(b) are based, unless such materials are subject to a privilege under federal law or classified pursuant to Executive Order. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 35.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 35.9.

**§ 35.21 Discovery.**

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 35.22 and 35.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) Motions for discovery. (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 35.24.

(3) The ALJ may grant a motion for discovery only if he finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged or classified information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 35.24.

(e) Depositions. (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 35.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

**§ 35.22 Exchange of witness lists, statements and exhibits.**

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 35.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

**§ 35.23 Subpoenas for attendance at hearing.**

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the day fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 35.8. A subpoena on a party or upon an individual under the control of a party may be served within the United States by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

**§ 35.24 Protective order.**

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party

or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, classified material, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

**§ 35.25 Fees.**

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

**§ 35.26 Form, filing and service of papers.**

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, a designation of the paper (*e.g.*, motion to quash subpoena), and shall be in English or accompanied by an English translation.

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing, shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

**§ 35.27 Computation of time.**

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

(c) Where a document has been served or issued by mail, or by airmail abroad, an additional five days will be added to the time permitted for any response.

**§ 35.28 Motions.**

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

**§ 35.29 Sanctions.**

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

**§ 35.30 The hearing and burden of proof.**

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 35.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

**§ 35.31 Determining the amount of penalties and assessments.**

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a state, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

**§ 35.32 Location of hearing.**

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place within the United States as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

**§ 35.33 Witnesses.**

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 35.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence in order to make—

(1) The interrogation and presentation effective for the ascertainment of the truth;

(2) To avoid needless consumption of time; and

(3) To protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

**§ 35.34 Evidence.**

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided herein, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is classified or otherwise privileged under Federal law.

(f) Evidence concerning offers or compromise or settlement shall be

inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 35.24.

**§ 35.35 The record.**

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 35.24.

**§ 35.36 Post-hearing briefs.**

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

**§ 35.37 Initial decision.**

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 35.3; and

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 35.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all defendants with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the authority head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

**§ 35.38 Reconsideration of initial decision.**

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail within the United States, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration of the initial decision, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the authority head in accordance with §35.39.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 35.39.

**§ 35.39 Appeal to authority head.**

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the authority head in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 35.38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The authority head may extend the initial 30-day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the authority head and the time for filing motions for reconsideration under § 35.38 has expired, the ALJ shall forward the record of the proceeding to the authority head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the authority head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless a demonstration is any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the authority head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the authority head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(k) The authority head shall promptly serve each party to the appeal with a copy of the decision of the authority head and a statement describing the right of the defendant to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a

defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 35.3 is final and is not subject to judicial review.

**§ 35.40 Stays ordered by the Department of Justice.**

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the authority head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the authority head shall stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

**§ 35.41 Stay pending appeal.**

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

**§ 35.42 Judicial review.**

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the authority head imposing penalties or assessments under this part and specifies the procedures for such review.

**§ 35.43 Collection of civil penalties and assessments.**

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

**§ 35.44 Right to administrative offset.**

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 35.42 or § 35.43, or any amount agreed upon in a compromise or settlement under § 35.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of federal taxes, then or later owing by the United States to the defendant.

**§ 35.45 Deposit in Treasury of United States.**

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

**§ 35.46 Compromise or settlement.**

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 35.42 or during the pendency of any action to collect penalties and assessments under § 35.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 35.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

**§ 35.47 Limitations.**

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 35.8 within six years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of notice under § 35.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

Dated: June 4, 1990.

**Robert M. Kimmitt,**

*Acting Secretary of State.*

[FR Doc. 90-13350 Filed 6-7-90; 8:45 am]

BILLING CODE 4710-08-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1910

**RIN 1216-AB26**

### Air Contaminants

**AGENCY:** Occupational Safety and Health Administration; Labor.

**ACTION:** Final rule; correction.

**SUMMARY:** This notice clarifies one paragraph in the preamble of the Air Contaminants Standard, which appeared in the **Federal Register** on January 19, 1989, at 54 FR 2331, relating to carbon disulfide.

**EFFECTIVE DATE:** June 8, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone: (202) 523-8148.

**SUPPLEMENTARY INFORMATION:** OSHA published its final rule on Air Contaminants on January 19, 1989, at 54 FR 2332-2963. That rule amended 29 CFR 1910.1000 and its tables.

In the preamble to the final rule, OSHA discussed operations where respirator use may be appropriate for coming into compliance with the new carbon disulfide limits. See page 2538. The language used in that discussion did not always follow the technical terminology which is used by the industry. It also did not refer to two processes which use similar technology and have similar circumstances. These are the two plants which make cellophane and approximately four small plants which make cellulose sponges. The following clarification uses more accurate terminology and indicates that the discussion covers similar operations in sponge and cellophane making. OSHA recognized the appropriateness of this clarification in the settlement agreement whereby the carbon disulfide industry withdrew its challenge to the carbon disulfide standard.

Accordingly the following correction is made in the final preamble to the Air Contaminants Standard, 54 FR 2332-2983, January 19, 1989, **Federal Register** Document No. 89-941, by revising the discussion beginning on the 4th line from the bottom of column one on page 2538 and ending on line 22 of the second column to read as follows:

OSHA's assessment of the feasibility of this limit indicates that, under normal

operating conditions, a 4 ppm TWA PEL and a 12 ppm STEL are generally achievable by using engineering and work-practice controls. Evidence in the record demonstrates that engineering controls and work practices are not feasible to achieve compliance and respiratory protection may be required during certain operations in industries that regenerate cellulose from viscose to form commercial products such as rayon staple, rayon yarn, cellophane, sponges and casings. Accordingly, respirators may be worn to achieve compliance with the Air Contaminants Standard when employees are performing the following tasks:

- Maintenance-type tasks (regardless of whether such tasks are performed by "maintenance personnel" or by others), such as tank washing, opening and redressing filters, cleaning process liquor screens, and handling unwashed, unpurified viscose and viscose products;
- Opening of production lines, *e.g.*, to troubleshoot production quality, take tank samples, set thickness of cellophane, change spinerettes, clear jams, spin, thread and align film and fiber strands during extrusion, regeneration, and cutting, and manually puncture casings;
- Handling of fibers and filament bundles that have been removed from process equipment;
- Effecting product-line changes; and
- Loading alkali cellulose, and unloading, washing and dissolving xanthate, viscose and viscose products.

Signed at Washington, DC, this 4th day of June, 1990.

**Gerard F. Scannell,**

*Assistant Secretary of Labor.*

[FR Doc. 90-13323 Filed 6-7-90; 8:45 am]

BILLING CODE 4510-26-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

[CGD5-90-023]

### Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the regulations that govern the operation of the Berkley drawbridge across the Eastern Branch of the Elizabeth River, mile 0.4, in Norfolk, Virginia, by restricting bridge openings during the morning and evening rush hours, and allowing commercial vessels with drafts 22 feet or greater passage through the bridge during the morning and evening rush hours provided they give a 12-hour advance notice of their arrival. The changes to this regulation are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

**EFFECTIVE DATE:** These regulations become effective on July 9, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398-6222.

**SUPPLEMENTARY INFORMATION:** On October 17, 1989, the Coast Guard published a notice of proposed rulemaking (54 FR 42517) concerning Berkley Bridge traffic and opening restrictions. Interested persons were given until December 1, 1989, to submit comments on the proposed rule. The Commander, Fifth Coast Guard District also published the proposal as a Public Notice on October 6, 1989. Interested persons were given until November 9, 1989, to submit comments. An amendment to the Public Notice was issued November 6, 1989, extending the comment period to December 1, 1989, to coincide with the comment period published in the **Federal Register**.

On March 7, 1990, the Coast Guard published a supplemental notice of proposed rulemaking in the **Federal Register** (55 FR 8154) to include a provision that exempts commercial vessels with drafts 22 feet or greater from rush hour restrictions provided they give at least a 12-hour advance notice for a bridge lift. Interested persons were allowed until April 23, 1990, to submit comments on the supplemental proposed rule. This proposal was also published as a Public Notice on March 2, 1990, giving interested persons until April 20, 1990, to submit comments.

#### Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer, and CAPT M.K. Cain, project attorney.

#### Discussion of Regulations

Virginia State Senator Stanley C. Walker requested that the regulations governing operation of the drawbridge across the Eastern Branch of the Elizabeth River at mile 0.4 in Norfolk, Virginia, be amended to restrict openings during peak highway traffic hours to help reduce traffic congestion, while remaining open on signal during the remainder of the time. This request was made because of bridge lifts during the morning and evening rush hours have been causing lengthy highway traffic backups with resultant delays lasting as long as 1½ hours. This change to the regulations will close the Berkley Bridge to most commercial, and to all recreational and public vessels, Monday through Friday, except Federal holidays, from 5:30 a.m. to 9 a.m. and from 3:30 p.m. to 6:30 p.m. Vessels in distress will be allowed passage through the bridge at all times. Commercial deep-draft vessels with drafts 22 feet or greater will be allowed access through the bridge anytime provided they give at least a 12-hour advance notice of their arrival during morning and evening rush hours. The proposed rule was published in the **Federal Register** (54 FR 42517) on October 17, 1989, and the proposal was announced in a Public Notice dated October 6, 1989. Interested persons were given until December 1, 1989, to comment on the proposed rule published in the **Federal Register**. The comment period for the Public Notice ended November 9, 1989. An amendment to the Public Notice was issued November 6, 1989, extending the comment period to December 1, 1989, to coincide with the comment period published in the **Federal Register**. As a result of the proposed rule that was published in the **Federal Register** and the Public Notice issued on October 6, 1989, and again on November 6, 1989, written comments were received from the maritime industry and the motoring public. The comments from motorists were all in favor of the proposed restrictions during peak traffic hours since elimination of the draw openings during these hours would help reduce traffic delays and congestion. The comments from the commercial marine industry were opposed to restricting openings during peak traffic hours. This was based on economic impact concerns, safety, and deep-draft vessel navigation requirements. The maritime industry stated that restriction of deep-draft vessels during morning and evening rush hours would result in numerous days when vessels with drafts of 22 feet or greater would not be able to transit through the bridge since these vessels require high tide to go upstream of the bridge due to channel depth. Based on the comments received from the commercial marine industry, a supplementary proposed rule was published in the **Federal Register** (55 FR 8154) on March 7, 1990, and announced in a Public Notice dated March 2, 1990. Interested persons were given until April 23, 1990, to comment on the supplemental proposed rule published in

the Federal Register, and the comment period for the Public Notice ended April 20, 1990. The supplementary proposed rule exempted commercial vessels with drafts 22 feet or greater from rush hour restrictions provided they give at least 12 hours' advance notice for a bridge lift.

Public comments were requested on the deep draft vessel exemption provision and the 12-hour advance notice. Comments received were from the motoring public. Most offered no objection to the exemption of deep draft vessels. Those objecting had misconstrued the reasoning behind the decision to allow deep draft vessels access through the bridge during morning and evening rush hours. No comments were received from the commercial marine industry. The Coast Guard feels that imposition of this final rule will not create an undue hardship on other commercial interests who do not use deep-draft vessels in their operations since these companies can schedule most of their vessel transits to accommodate restricted hours of operation. Balancing the instant considerations, the final rule is adopted as proposed in the supplemental proposal.

**Federalism Assessment**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule will not raise sufficient federalism implications to warrant preparation of a Federalism Assessment.

**Economic Assessment and Certification**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034 February 26, 1979). The economic impact of these regulations on commercial navigation or on any industries that depend on waterborne transportation should be minimal. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**Environmental Impact**

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

In consideration of the foregoing, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations to read as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); 33 CFR 117.43.

2. Section 117.1007 is amended by adding paragraph (c) to read as follows:

**§ 117.1007 Elizabeth River—Eastern Branch.**

* * * * *

(c) The draw of the Berkley Bridge, mile 0.4 in Norfolk—

(1) Shall open on signal at any time except from 5:30 a.m. to 9 a.m. and from 3:30 p.m. to 6:30 p.m., Monday through Friday, except Federal holidays.

(2) From 5:30 a.m. to 9 a.m. and from 3:30 p.m. to 6:30 p.m., Monday through Friday, except Federal holidays;

(3) Shall open at any time for commercial vessels with a draft of 22 feet or more, provided at least 12 hours advance notice has been given to the Berkley Bridge Traffic Control Room at (804) 494-2424, and

(4) Shall open on signal at any time for a vessel in distress.

Dated: May 23, 1990.

**P.A. Welling,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 90-13319 Filed 6-7-90; 8:45 am]

BILLING CODE 4910-14-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Parts 405, 413, and 414

[BPD-381-F]

RIN 0938-AC57

## Medicare Program; Payment for Physician Outpatient Maintenance Dialysis Services and Other Physician Services for ESRD Patients

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule reinstates a modified version of the initial method of payment for physician dialysis services and clarifies and modifies some of the principles of the monthly capitation payment method. Under both the initial method and the monthly capitation payment method, we specify that, to be payable, physician services must meet certain requirements that distinguish services furnished to individual patients from services furnished to facilities that benefit the facilities' patients generally. The reinstatement of a modified version of the initial method is necessitated by a court order.

**EFFECTIVE DATE:** These regulations are effective August 7, 1990.

**FOR FURTHER INFORMATION, CONTACT:**

Robert Niemann regarding physician payment (301) 966-4569.

John Powell regarding minimum utilization rates (301) 966-9671.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Before August 1, 1983, section 1881(b)(3) of the Social Security Act (the Act) permitted Medicare to pay for physician outpatient maintenance dialysis services under one of two methods—the "initial method" (IM) or the "alternative reimbursement method" (ARM). Under the IM, payment for physician "supervisory services" was made to the dialysis facility through an add-on amount to the facility's dialysis treatment payment rate. Physicians' supervisory services are listed in this final rule in 42 CFR 414.313(b)(1) (previously § 405.542(b)(1)). They include monitoring and evaluating the patient during dialysis, reviewing psychosocial and dietary issues, etc.

Under the ARM, all physician outpatient maintenance dialysis services (except declotting of shunts) were paid through a single monthly payment to the physician. Payment for declotting of shunts was made under the fee-for-service reasonable charge method.

Section 2145 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) amended section 1881(b)(3) of the Act to require that physician payment be made in a way that promotes the increased use of home dialysis. To accomplish this intent, on May 11, 1983, under the authority of section 1881(b)(3)(B) of the Act, we published a final rule (48 FR 21254) that was effective on August 1, 1983. That final rule revised the payment regulations by eliminating the IM and modifying the ARM to create the monthly capitation payment (MCP) method.

These modifications to the payment regulations created a substantial incentive for physicians to accept and encourage home dialysis. The IM was eliminated because it did not promote the use of home dialysis. Under the IM, physicians did not furnish "routine physician services" to home patients (since the dialysis occurred at home) and rarely furnished services (for which they could have been paid) to home dialysis patients at other times.

The main difference between the ARM and the MCP method is that, under the ARM, the monthly payment for home patients had been set at 70 percent of the payment for in-facility patients; whereas, under the MCP method, monthly payments for services to home and in-facility patients are equal.

The U.S. District Court for the District of Columbia ordered the Secretary to reinstate a modified version of the IM that would advance the congressional purpose of encouraging home dialysis, administrative inconvenience not withstanding *(National Association of Patients on Hemodialysis and Transplantation, Inc. et al. v. Heckler,* 558 F. Supp. 1108 (D.D.C. 1984)). Therefore, we published a proposed rule in the Federal Register on October 5, 1987 (52 FR 37176). That rule proposed to reinstate a modified version of the IM of payment for physician dialysis services and clarify and modify some of the principles of the MCP method.

## II. Summary of Proposed Rule

### *A. Revision and Restoration of the IM*

In restoring the IM, we proposed to—

- Adjust the add-on amount (as described below) in the same manner as we adjusted the payment amount under the ARM in effect before August 1983; and
- Retain the provision that physicians could be paid under the IM only if that method was elected by all the physicians who furnish services to the facility's patients on maintenance dialysis or in training for self-dialysis.

The adjustment of the add-on amount would be done by first revising the estimate of the amount of physician involvement in treating maintenance dialysis outpatients; and then combining the monthly amounts that are paid for in-facility and home dialysis into one composite payment. We proposed to add the additional payment to the labor portion of the composite rate and multiply it by the hospital wage index to account for geographic variations in physicians' remuneration. (We stated that as data became available on the nature of the physician services furnished and the value of those services, we would examine the appropriateness of using the hospital wage index to measure variations in physician charges. The specific methodology for setting rates under the revised IM is described in detail in section II.C. below.)

As proposed, the election of the IM, rather than the MCP method, would cover all in-facility and home dialysis patients the physician attends in or through that facility. Physicians would be required to submit a statement of agreement concerning their election of the revised IM; in the absence of an election, the carrier would assume that the physician intends to accept payment under the MCP method.

### *B. Distinguishing Between Physician Services to Patients and Physician Services to the Facility*

As noted in the proposed rule (52 FR 37178), extending the IM to include payment related to services in the home would encourage home dialysis and thus conform to congressional intent. However, we also need to make a consistent and proper distinction between services a physician furnishes to individual patients and services the physician performs for the facility. The latter are considered services to the facility and are paid as facility costs to the facility through the composite rate. The former are paid to the physician by the Medicare carrier.

The criteria for determining reasonable charges appear in regulations in § 405.502. (The reasonable charge for a service is generally the lowest of—(1) The actual charge; (2) the customary charge made by a particular physician or supplier; or (3) the prevailing charge, which is set at the 75th percentile in the range of customary charges for similar services in the locality. Annual increases in the prevailing charge are limited by the Medicare economic index.)

Therefore, we proposed to establish rules governing payment for physician services furnished in ESRD facilities that are consistent with the rules for physician services furnished in hospitals, skilled nursing facilities, and comprehensive outpatient rehabilitation facilities (§§ 405.480 through 405.482, and §§ 405.550 through 405.557). We recognize that the authority established under section 1887 of the Act does not extend to independent ESRD facilities, since they are not providers (although, under section 1861(b)(2)(D) of the Act and § 413.170(h), ESRD facilities are treated as providers for some purposes). Responsible management of the program requires that we make some distinction between two types of services covered under two different payment mechanisms (that is, physicians' administrative services are paid for under the composite rate paid to facilities, and physicians' professional services are paid for under the MCP paid to physicians). The distinction is also necessary to ensure that the program does not pay twice for the same services. We believe that it is reasonable to make this distinction for ESRD services just as we make the distinction for other physician services.

### *C. Ratesetting Under the Revised Initial Method*

We stated in the proposed rule (52 FR 37179) that the proposed add-on amount to the IM would be calculated as follows:

1. Start with the original $12 IM add-on.
2. Calculate the average ARM in-facility rate: [$260 (max.) + $180 (min.)] divided by 2 = $220.00.
3. Calculate the average MCP rate: [$203 (max.) + $132 (min.)] divided by 2 = $167.50.
4. Calculate the ratio between steps 3 and 2. $167.50 / $220 = .7614.
5. Multiply $12 (step 1) by the ratio in step 4: $12 × .7614 = $9.14 (new IM add-on amount).

On August 15, 1986, we published a final notice (51 FR 24904) that changed the methodology for setting the payment rates and set forth revised rates for services furnished after September 30, 1986. In that final notice, we continued the lower and upper limits on the facility ESRD composite rate originally set forth in the preamble to the May 11, 1983 final rule. (As stated earlier, in an effort to promote the increased use of home dialysis, we published the May 11, 1983 final rule (48 FR 21254), which implemented the composite payment rate system for outpatient maintenance dialysis treatments.) We limited the effect of using the 1984 HCFA wage index, which otherwise would have caused a great variation in the composite rates. The lower limit was set by using a minimum wage index of 0.9. The upper limit was set at the previous ESRD facility payment screen of $138 per treatment. Under the revised IM, we proposed that the same minimum wage index of 0.9 be used, resulting in a minimum add-on of $8.23 (0.9 × $9.14). We proposed to set the revised upper limit at the previous IM ESRD facility payment screen of $150 per treatment (that is $138 plus the $12 IM add-on).

Since the publication date of the proposed rule, Congress passed the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239, enacted on

December 19, 1989). Section 6102 of Public Law 101–239 provides for a fee schedule effective for all physicians' services (beginning with 1992) for which payment is otherwise made on the basis of a reasonable charge or fee schedule for radiologists' services. Physicians' services paid by either the MCP or the IM do not meet these criteria; therefore, the legislation does not affect these services. Physicians' services paid in addition to the MCP or the IM are paid on the basis of reasonable charges and would be subject to the reform legislation.

Public Law 101–239 also set forth other requirements regarding payment for ESRD services. Specifically, section 6203(a) mandates that we must maintain the current ESRD composite rate unless we follow the notice and comment requirements set forth in section 1871(b)(1) of the Act. Section 6203(b) sets forth payment requirements for patients that deal directly with Medicare. We are preparing a separate rule to implement the requirements of section 6203(b).

## III. Discussion of Public Comments

We received 13 pieces of timely correspondence from 6 physicians, and 1 each from a registered nurse, physicians' association, dialysis management consultant, State Medicaid program, Medicare carrier, Medicare carrier association, and dialysis chain. The commenters suggested changes concerning payment for physician outpatient maintenance dialysis services, how payment is computed, what it covers, and other physician services for ESRD patients. Our references to specific regulation sections identify the newly redesignated headings as explained in section V of this preamble.

1. *Comment:* A commenter stated that payment under the IM is less than the MCP method.

*Response:* We do not agree with the commenter. The MCP method includes services that must be billed for separately under the IM (for example, monthly examinations). We have set the payment levels under the two methods so that in the aggregate they will be approximately equal.

2. *Comment:* A commenter stated that it is unfair to include more services under the modified IM than were included under the former IM before August 1, 1983 and also reduce the payment. The commenter believes the increase in the payment for home dialysis services should not be used to offset the additional services, and that offsetting would eliminate the incentive for home dialysis.

*Response:* We do not agree with the commenter. We attempted to establish the IM payment at a budget neutral level so that the payment for physician renal-related services under the MCP method and the IM would be approximately equal. The incentive for home dialysis appears in the form of the same IM allowance for dialysis services furnished to patients in the home as is allowed for in-facility patients, even though fewer services are furnished to home patients.

3. *Comment:* A commenter suggested that the services covered under the MCP method and the IM should be constant and not continually changed.

*Response:* One purpose of the regulations process is to provide a mechanism for change when change is considered necessary. In this case, we are revising the definition of "administrative services" (§ 414.310(c)) to clarify that the same coverage rules for physician services (§ 405.550) that generally apply to all other physician services covered by the Medicare program also apply to nephrologist's services.

4. *Comment:* A commenter suggested that "availability of physicians" should be covered under the MCP method and the IM as a physician service.

*Response:* We do not agree with the commenter. With the exception of certain emergency room arrangements, physician availability is not specifically covered by the Medicare program.

5. *Comment:* A commenter suggested that the MCP should not include evaluations of patients for suitability for a transplant procedure.

*Response:* We did not accept this comment. At this time the Medicare program includes evaluations for general suitability for a transplant procedure under the MCP. The patient's MCP physician monitors the patient's condition on a regular, ongoing basis and is in the best position to continually evaluate whether the patient is or is not a suitable transplant candidate. A formal evaluation for suitability in anticipation of a transplant procedure is separately billable.

6. *Comment:* A few commenters believe that the new IM add-on amount would be too low and identified the following flaws in the methodology used to set the IM:

a. The $12 base was not inflated from 1973.

b. The average MCP is not the maximum or minimum; it should be weighted by the number of physicians.

c. There is no analysis of the add-on amount and the services furnished.

*Response:* We do not agree with the commenters. The IM add-on was computed to be budget neutral vis-a-vis the MCP method. Therefore, the benchmark or reference point for the IM is not the old IM, but the current value of the MCP. We intend that aggregate payments for physician renal-related services under either method will be approximately equal.

7. *Comment:* A commenter suggested that the IM add-on should be constant and not vary by wage index areas. Otherwise, the IM add-on is "unreasonably depressed" in areas with low wage indices.

*Response:* We do not agree with the commenter. We have a floor on the wage index (0.9) to prevent any composite rate from being unreasonably depressed as a result of the wage index for a specific area.

8. *Comment:* A commenter suggested that the IM add-on should be subject to the Medicare economic index (MEI).

*Response:* We have not adopted this comment. The statute does not provide for application of the MEI to either the MCP method or the IM.

9. *Comment:* A commenter stated that the IM elections should be in effect for an entire calendar year to avoid problems of adjusting dialysis facility payment rates between calendar years.

*Response:* We agree with the commenter. We have revised § 414.313(c)(2) to require that once a payment method is elected, it must be used for the entire calendar year for which it is effective. We have specified in § 414.313(d) that physicians may terminate the initial method of payment by written notice to the carrier(s) that serves each physician and to the intermediary that serves the facility. The effective date of the termination is determined by the date upon which the carrier and intermediary receive the termination notice. If the termination notice is received by the carrier(s) and intermediary on or before November 1, the effective date of the termination is January 1 of the year following the calendar year in which the termination notice is received by the carrier(s) and intermediary. If the termination notice is received by the carrier(s) and intermediary after November 1, the effective date of the termination is January 1 of the second year after the calendar year in which the notice is received by the carrier(s) and intermediary.

10. *Comment:* A commenter suggested that the physical presence of a physician during the delivery of services to a patient should not be required. For example, the commenter believes that furnishing a direct order to a nurse who actually furnishes the service should be

a covered physician service. The commenter believes that without this change HCFA will perceive nephrologists as doing less than they really are and eventually lower payment.

*Response:* We believe this concern is unfounded. The rules for nephrologists' services are the same rules that apply to all other physician services under the Medicare program. In order to be paid under part B by the carrier, the physician services must—(1) Be personally furnished for an individual patient by a physician; (2) contribute directly to the diagnosis or treatment of an individual patient; and (3) ordinarily require performance by a physician. (See 42 CFR 405.550.)

11. *Comment:* One commenter stated that only direct physician services would be covered. Therefore, the services of physician assistants, interns, residents, and registered nurses would not be covered.

*Response:* We believe this commenter misunderstood our proposed rule. It is true that these services will not be included in the IM add-on. These services, however, will be covered when the usual program requirements are met and will be paid in the usual way. For example, if a physician assistant or a registered nurse furnishes services to a dialysis patient in an independent dialysis facility, these services will be paid as part of the composite rate payment to the facility.

12. *Comment:* A commenter stated that the definition of "medical direction" (§ 414.310(c)) implies that whether it is necessary or not, the physician must see the patient every time the patient dialyzes in order for the IM add-on to be paid.

*Response:* The physical presence of the physician is not a requirement for the IM add-on to be paid. The IM add-on will be paid for every dialysis session whether or not the physician actually sees the patient during the particular session. The physician, however, is responsible for furnishing all medically necessary physician services covered by the IM.

13. *Comment:* A commenter stated that HCFA is not following the intent of the decision made by the U.S. District Court for the District of Columbia. The court ordered HCFA to reinstate the IM in a way that promotes the use of home dialysis. Instead, HCFA is increasing the restrictions on physician in-facility dialysis services.

*Response:* We disagree with the commenter. We intend to achieve a consistency between the payment principles that apply to physician dialysis services furnished in hospital-based or independent dialysis facilities and other physician services furnished to Medicare beneficiaries. We believe that this final rule provides an incentive for home dialysis in that the allowance for physicians' services is the same for home and in-facility dialysis, even though home dialysis requires fewer services.

14. *Comment:* A commenter stated that HCFA should have only one method of payment for physician dialysis services. The commenter believes that it is administratively too costly to maintain two methods of payment for the same services.

*Response:* We cannot accept this comment. The U.S. District Court for the District of Columbia, ordered HCFA to reinstate the IM, with modifications, irrespective of the administrative expense.

15. *Comment:* A commenter stated that home dialysis cannot be promoted through payments to the physician.

*Response:* We disagree with the commenter. As stated previously, we believe this final rule provides an incentive for home dialysis in that the allowance for physicians' services is the same for home and in-facility dialysis, even though home dialysis requires fewer services. We believe this payment system will promote the use of home dialysis as intended by the law and ordered by the court.

16. *Comment:* A commenter suggested that HCFA should pay physicians separately for services that are not renal-related whether or not they are furnished during a dialysis session.

*Response:* We did not accept this comment. As we stated in the proposed rule, if separate payment were permitted for physician services that are furnished during a dialysis session but are not renal-related, Medicare carriers would be required to decide which services are renal-related and which are not, a distinction that is difficult to make and one upon which even experts could disagree. Furthermore, we do not believe dialysis physicians commonly furnish, during the dialysis session, services that are not renal-related. This policy is consistent with the MCP method; nonrenal-related physician services are included under the MCP unless a separate visit, not necessitated by the patient's renal condition, is required.

17. *Comment:* A commenter suggested that physician services such as patient care planning, progress notes, and medical record entries, should be under the IM and the MCP method. The proposed rule apparently shifts these physician services from the IM or the MCP into the facility composite rate (§ 413.170).

*Response:* Patient care planning has never been paid for under the MCP or the former IM. It has always been paid for under the facility's composite rate because it does not meet the program's requirements for physician's services that are paid for under part B by a carrier (§ 405.550). Physician's notes are considered integral to the covered services physicians furnish and are paid for through the IM and MCP.

18. *Comment:* A commenter believes that physician participation in patient care planning and other patient medical management activities (including medical record documentation) is sometimes lax. The commenter suggests making performance of these activities mandatory in order for a physician to receive payment under either the MCP or the IM.

*Response:* We are unable to accept this comment. These services are physicians' administrative services and are covered under the composite rate payment made to the facility. It is the facility's responsibility to ensure that they are performed consistent with the conditions for coverage that must be met to participate in the Medicare ESRD program (42 CFR 405, subpart U). We do not have the authority to withhold that payment simply to ensure the performance of the cited activities.

19. *Comment:* A commenter stated that it was unreasonable to define "dialysis session" in a way that penalizes physicians with private offices located in a dialysis facility's building (§ 414.310(c)).

*Response:* We had proposed to define "dialysis session" as the time beginning when the patient arrives at the facility and ending when the patient departs. All physicians' services furnished during this time would be paid through the IM add-on. Therefore, under this definition physician's services furnished in the physician's private office located in the facility would not be separately billable. We never intended for the definition of "dialysis session" to penalize physicians with private offices located in a dialysis facility's building. Therefore, we have revised the definition to clarify that a dialysis facility includes only those parts of the building used as a facility. It does not include any areas used as a physician's private office.

20. *Comment:* Under the new definition of "supervision of staff" (§ 414.310(c)), a commenter believes that certain previously, separately covered physician services would no longer be covered and that physicians would have to alter their billing practices.

*Response:* We disagree with the commenter. This change is consistent with § 405.550, which states the conditions for payment of charges for physician services to patients in providers. We intend to apply these criteria uniformly to all physician services furnished to Medicare beneficiaries in similar settings. Since physicians are not required to identify their individual services when billing Medicare under either the MCP method or the IM, we do not understand why the commenter believes the billing would change.

21. *Comment:* A commenter stated that the definitions of "administrative services" and "supervision of staff" are inconsistent (§ 414.310(c)). The proposed rule states that "administrative services" do not relate to the benefit of an individual patient, but include "supervision of staff", which relates to an individual patient.

*Response:* We agree that there was an apparent inconsistency in the proposed rule. The new definition of "administrative services" clearly includes "supervision of staff" and is distinct from "medical direction", which is directly related to care of an individual patient.

22. *Comment:* A commenter stated that physician supervisory services (for example, supervising a nurse) should be included in the IM and MCP provided for in these regulations. The commenter believes that the services should not be considered services to the facility because they are for an individual patient (§ 405.550).

*Response:* We did not accept this comment. Physician supervisory services were determined to be payable only to a provider in a final rule published on March 2, 1983 (48 FR 8902), under the heading "Distinguishing Physician Services to Providers from Physician Services to Individual Patients". Nevertheless, we are revising the definition of "administrative services" (§ 414.310(c)) to clarify that the coverage rules for all other physician services furnished in a provider setting also apply to physician services furnished in an ESRD facility.

23. *Comment:* A commenter suggested that HCFA should have consulted with the physician community before it promulgated a notice of proposed rulemaking.

*Response:* The purpose of publishing a notice of proposed rulemaking is to solicit public comments on a proposal, including comments from the physician community.

24. *Comment:* A commenter approved of the definition and inclusion of "medical direction" as a part of physician services under the MCP.

## IV. Provisions of the Final Rule

We are adopting the provisions set forth in the NPRM with certain exceptions. These include technical changes and other changes noted in the "Discussion of Public Comments" and summarized below.

1. We have revised the definition for "administrative services" to clarify that the definition clearly includes "supervision of staff" as distinct from "medical direction", which is directly related to care of an individual patient. (§ 400.310(c)).

2. We have revised the definition of "administrative services" (§ 414.310(c)) to clarify that the coverage rules for physician services furnished in a provider setting also apply to physician services furnished in an ESRD facility.

3. We have revised the definition of "dialysis session" to clarify that it is the period of time that begins when the patient arrives at the facility and ends when the patient departs the facility. Moreover, a dialysis facility, in this context, does not include any areas used as a physician's private office (§ 414.310(c)).

4. We have revised § 414.313(c)(2) to require that once the IM is elected, it must be used for the entire calendar year for which it is effective. We have specified in § 414.313(d) the effective date of the IM.

5. We are conforming our regulations to section 4036(b) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), which became effective on December 22, 1987. That section eliminates minimum utilization rates (MURs) for hemodialysis services, but retains the MURs for transplants. We have made the following technical changes:

a. We have deleted the reference to "dialyses" in § 405.2120, which sets forth general information on MURs for suppliers of ESRD services. This clarifies that MURs will no longer apply to dialysis services.

b. We have changed § 405.2122, which sets forth types and duration of classification according to utilization rates for renal dialysis centers or facilities, so that it applies to renal transplantation centers only.

c. In § 405.2123, we have deleted the introductory sentence and paragraph (b), and revised paragraph (a). These changes clarify that only hospitals furnishing renal transplantation need continue to report utilization rates; dialysis centers or facilities are exempt.

d. We have revised § 405.2130, which sets forth MURs, so that it applies to transplantation centers only.

## V. Redesignation Table

In addition to the proposed redesignation of current § 405.542 under a new part 414, subpart E, we also are redesignating current § 405.543 under the new part 414, subpart E. As other portions of subpart E of part 405 are revised, they will be redesignated under part 414. These redesignations are reflected by the following table:

| Old paragraph or section | New paragraph or section |
|---|---|
| 405.542(a) | 414.310 |
| 405.542(b) | 414.313 |
| 405.542(c) | 414.314 |
| 405.542(d) | 414.316 |
| 405.543 | 414.320 |

## VI. Paperwork Reduction Act of 1980

*Information Collection Requirements*

Final regulations at §§ 405.2123(a) and 414.313(c)(1) contain information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The requirements contained in § 405.2123 were approved by OMB, and the OMB approval number is 0938–0386.

The information collection requirements in § 414.313(c)(1) concern the election of the IM of payment by all physicians that attend in-facility and home dialysis patients in or through a facility. All physicians working for a facility must sign and date a statement of agreement concerning their election of the revised IM. In the absence of an election, the carrier will assume that the physician intends to accept payment under the MCP method. Public reporting burden for this collection of information is estimated to be 5 minutes per election.

A notice will be published in the **Federal Register** after approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements contained in this final rule should submit comments to: Allison Herron, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503.

## VII. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a

regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- 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.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians are treated as small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule reinstates a modified version of the IM of payment for physician dialysis services and clarifies and modifies some of the principles of the MCP method. By reinstating a modified version of the IM, we believe we have created some incentive for home dialysis. This is because the IM allowance to facilities for dialysis services furnished to patients in the home is the same as that allowed for in-facility patients, even though fewer services are usually furnished to home patients.

However, we do not expect physicians to make significant changes in their charging practices as a result of this final rule; nor do we expect many physicians will change their method of payment from the MCP method to the IM. The IM add-on for routine professional services furnished by physicians was computed to be budget neutral with respect to the MCP method. We intend that aggregate payments for physician renal-related services under either method will be approximately equal.

We are revising the definition of "administrative services" (§ 414.310(c)) to clarify that the physicians' administrative services are paid for under the composite rate paid to facilities. Only physicians' professional services are paid for under the MCP paid to physicians. The distinction between administrative services and professional services is necessary to ensure that the program does not pay twice for the same services.

We have also revised the definition of "dialysis session" to clarify that a dialysis facility includes only those parts of the building used as a facility. We never intended that the definition of "dialysis session" penalize physicians with private offices located in a dialysis facility's building. We do not have an estimate of the number of physicians who will benefit, but we believe the number or effect will not be significant.

This final rule does not meet the $100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this final rule is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

Further, we have determined and the Secretary certifies that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant economic impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

**List of Subjects**

*42 CFR Part 405*

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

*42 CFR Part 413*

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

*42 CFR Part 414*

End-stage renal disease (ESRD), Health professions, Laboratories, Medicare.

42 CFR chapter IV is amended as set forth below:

A. Part 405, subparts E and U are amended as follows:

## PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

### Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

1. The authority citation for subpart E continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 13951(a), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

**§ 405.541 through 405.544 [Removed]**

2. Sections 405.541 through 405.544 are removed.

### Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

3. The authority citation for subpart U continues to read as follows:

Authority: Secs. 1102, 1861, 1862(a) 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr).

4. Section 405.2120 is revised to read as follows:

**§ 405.2120 Minimum utilization rates: general.**

Section 1881(b)(1) of the Social Security Act (42 U.S.C. 1395rr(b)(1)) authorizes the Secretary to limit payment for ESRD care to those facilities that meet the requirements that the Secretary may prescribe, including minimum utilization rates for covered transplantations. The minimum utilization rates, which are explained and specified in §§ 405.2121 through 405.2130, may be changed from time to time in accordance with program experience. Changes will be published as amendments to these regulations.

**§ 405.2121 [Amended]**

5. In § 405.2121, remove the word "minimal" and add in its place the word "minimum".

**§ 405.2122 [Amended]**

6. The first sentence in the introductory paragraph of § 405.2122 is amended by removing "An ESRD facility" and adding in its place "A renal transplantation center". Paragraph (a)(1) is amended by removing "An ESRD facility" and adding in its place "A renal transplantation center". Paragraph (a)(2) is amended by removing "ESRD

facility's" and adding in its place "renal transplantation center's". Paragraph (b)(1) is amended by removing "dialysis center or a renal dialysis facility" and adding in its place "transplantation center". Paragraphs (b)(1) introductory text and (b)(1)(ii) are amended by removing "minimal" and adding in its place the word "minimum".

7. Section 405.2123 is revised to read as follows:

**§ 405.2123 Reporting of utilization rates for classification.**

Each hospital furnishing renal transplantation services must submit an annual report to HCFA on its utilization rates. The report must include both the number of transplants performed during the most recent year of operation and the number performed during each of the preceding 2 calendar years.

8. Section 405.2130 is revised to read as follows:

**§ 405.2130 Condition: minimum utilization rates.**

Unless a renal transplantation center is granted an exception under § 405.2122(b), the center must meet the following minimum utilization rate(s) for unconditional or conditional status:

(a) Unconditional status: 15 or more transplants performed annually.

(b) Conditional status: 7 to 14 transplants performed annually.

B. Part 413, subpart H is amended as set forth below:

## PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

### Subpart H—Payment for End-Stage Renal Disease (ESRD) Services

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320a–l, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, and 1395ww).

2. Section 413.170 is amended by removing the reference to "§ 405.231(o) and (p)" in paragraph (a)(1) and adding in its place "§§ 410.50 and 410.52", and adding a new paragraph (c)(5) to read as follows:

**§ 413.170 Payments for covered outpatient maintenance dialysis treatments.**

* * * * *

(c) *Prospective rates for hospital-based and independent ESRD facilities.*

* * * * *

(5) If all the physicians furnishing services to patients in an ESRD facility elect the initial method of payment (as described in § 414.313(c)), the prospective rate (as described in paragraph (c)(1) of this section) paid to that facility will be increased by an add-on amount as described in § 414.313 of this chapter.

C. A new part 414 is added to read as follows:

## PART 414—PAYMENT ON A REASONABLE CHARGE BASIS

### Suparts A–D [Reserved]

### Subpart E—Determination of Reasonable Charges Under the ESRD Program

Sec.

414.300 Scope of subpart.
414.310 Determination of reasonable charges for physician services furnished to renal dialysis patients.
414.313 Initial method of payment.
414.314 Monthly capitation payment method.
414.316 Payment for physician services to patients in training for self-dialysis and home dialysis.
414.320 Determination of reasonable charges for physician renal transplantation services.
414.330 Payment for home dialysis equipment, supplies, and support services.

Authority: Secs. 1102, 1833(a), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395l(a), 1395hh, and 1395rr).

### Subparts A–D [Reserved]

### Subpart E—Determination of Reasonable Charges Under the ESRD Program

**§ 414.300 Scope of subpart.**

This subpart sets forth criteria and procedures for payment of the following services furnished to ESRD patients:

(a) Physician services related to renal dialysis.

(b) Physician services related to renal transplantation.

(c) Home dialysis equipment, supplies, and support services.

**§ 414.310 Determination of reasonable charges for physician services furnished to renal dialysis patients.**

(a) *Principle.* Physician services furnished to renal dialysis patients are subject to payment if the services are otherwise covered by the Medicare program and if they are considered reasonable and medically necessary in accordance with section 1862(a)(1)(A) of the Act.

(b) *Scope and applicability*— (1) *Scope.* This section pertains to physician services furnished to the following patients:

(i) Outpatient maintenance dialysis patients who dialyze—

(A) In an independent or hospital-based ESRD facility, or

(B) At home.

(ii) Hospital inpatients for which the physician elects to continue payment under the monthly capitation payment (MCP) method described in § 414.314.

(2) *Applicability.* These provisions apply to routine professional services of physicians. They do not apply to administrative services performed by physicians, which are paid for as part of a prospective payment for dialysis services made to the facility under § 413.170 of this chapter.

(c) *Definitions.* For purposes of this section, the following definitions apply:

*Administrative services* are physician services that are differentiated from routine professional services and other physician services because they are supervision, as described in the definition of "supervision of staff" of this section, or are not related directly to the care of an individual patient, but are supportive of the facility as a whole and of benefit to patients in general. Examples of administrative services include supervision of staff, staff training, participation in staff conferences and in the management of the facility, and advising staff on the procurement of supplies.

*Dialysis session* is the period of time that begins when the patient arrives at the facility and ends when the patient departs from the facility. In the case of home dialysis, the period begins when the patient prepares for dialysis and generally ends when the patient is disconnected from the machine. In this context, a dialysis facility includes only those parts of the building used as a facility. It does not include any areas used as a physician's office.

*Medical direction*, in contrast to supervision of staff, is a routine professional service that entails substantial direct involvement and the physical presence of the physician in the delivery of services directly to the patient.

*Routine professional services* include all physicians' services furnished during a dialysis session and all services listed in paragraph (d) of this section that meet the following requirements:

(1) They are personally furnished by a physician to an individual patient.

(2) They contribute directly to the diagnosis or treatment of an individual patient.

(3) They ordinarily must be performed by a physician.

*Supervision of staff*, in contrast to medical direction, is an administrative service that does not necessarily require the physician to be present at the

dialysis session. It is a general activity primarily concerned with monitoring performance of and giving guidance to other health care personnel (such as nurses and dialysis technicians) who deliver services to patients.

(d) *Types of routine professional services.* Routine professional services include at least all of the following services when medically appropriate:

(1) Visits to the patient during dialysis, and review of laboratory test results, nurses' notes and any other medical documentation, as a basis for—

(i) Adjustment of the patient's medication or diet, or the dialysis procedure;

(ii) Prescription of medical supplies; and

(iii) Evaluation of the patient's psychosocial status and the appropriateness of the treatment modality.

(2) Medical direction of staff in delivering services to a patient during a dialysis session.

(3) Pre-dialysis and post-dialysis examinations, or examinations that could have been furnished on a pre-dialysis or post-dialysis basis.

(4) Insertion of catheters for patients who are on peritoneal dialysis and do not have indwelling catheters.

(e) *Payment for routine professional services.* Beginning August 7, 1990, routine professional services furnished by physicians may be paid under either the "initial method" of payment described in § 414.313, (if all of the physicians at the facility elect the initial method) or under the "physician MCP method" described in § 414.314. Physician services furnished after July 31, 1983 and before August 6, 1990, are payable only under the MCP method described in § 414.314.

**§ 414.313 Initial method of payment.**

(a) *Basic rule.* Under this method, the intermediary pays the facility for routine professional services furnished by physicians. Payment is in the form of an add-on to the facility's composite rate payment, which is described in § 413.170 of this chapter.

(b) *Services for which payment is not included in the add-on payment.* (1) Physician administrative services are considered to be facility services and are paid for as part of the facility's composite rate.

(2) The carrier pays the physician or the beneficiary (as appropriate) under the reasonable charge criteria set forth in subpart E of part 405 of this chapter for the following services:

(i) Physician services that must be furnished at a time other than during the dialysis session (excluding pre-dialysis and post-dialysis examinations and examinations that could have been furnished on a pre-dialysis or post-dialysis basis), such as monthly and semi-annual examinations to review health status and treatment.

(ii) Physician surgical services other than insertion of catheters for patients who are on peritoneal dialysis and do not have indwelling catheters.

(iii) Physician services furnished to hospital inpatients who were not admitted solely to receive maintenance dialysis.

(iv) Administration of hepatitis B vaccine.

(c) *Physician election of the initial method.* (1) Each physician in a facility must submit to the appropriate carrier and intermediary that serve the facility a statement of election of the initial method of payment for all the ESRD facility patients that he or she attends.

(2) The initial method of payment applies to dialysis services furnished beginning with the second calendar month after the month in which all physicians in the facility elect the initial method and continues until the effective date of a termination of the election described in paragraph (d) of this section.

(d) *Termination of the initial method.* (1) Physicians may terminate the initial method of payment by written notice to the carrier(s) that serves each physician and to the intermediary that serves the facility.

(2) If the notice terminating the initial method is received by the carrier(s) and intermediary—

(i) On or before November 1, the effective date of the termination is January 1 of the year following the calendar year in which the termination notice is received by the carrier(s) and intermediary; or

(ii) After November 1, the effective date of the termination is January 1 of the second year after the calendar year in which the notice is received by the carrier(s) and intermediary.

(e) *Determination of payment amount.* The factors used in determining the add-on amount are related to program experience. They are re-evaluated periodically and may be adjusted, as determined necessary by HCFA, to maintain the payment at a level commensurate with the prevailing charges of other physicians for comparable services.

(f) *Publication of payment amount.* Revisions to the add-on amounts are published in the **Federal Register** in accordance with the Department's established rulemaking procedures.

**§ 414.314 Monthly capitation payment method.**

(a) *Basic rules.* (1) Under the monthly capitation payment (MCP) method, the carrier pays an MCP amount for each patient, to cover all professional services furnished by the physician, except those listed in paragraph (b) of this section.

(2) The carrier pays the MCP amount, subject to the deductible and coinsurance provisions, either to the physician if the physician accepts assignment or to the beneficiary if the physician does not accept assignment.

(3) The MCP method recognizes the need of maintenance dialysis patients for physician services furnished periodically over relatively long periods of time, and the capitation amounts are consistent with physicians' charging patterns in their localities.

(4) Payment of the capitation amount for any particular month is contingent upon the physician furnishing to the patient all physician services required by the patient during the month, except those listed in paragraph (b) of this section.

(5) Payment for physician administrative services (§ 414.310) is made to the dialysis facility as part of the facility's composite rate (§ 413.170) and not to the physician under the MCP.

(b) *Services not included in the MCP.* (1) Services that are not included in the MCP and which may be paid in accordance with the reasonable charge rules set forth in subpart E of part 405 of this chapter are limited to the following:

(i) Administration of hepatitis B vaccine.

(ii) Covered physician services furnished by another physician when the patient is not available to receive, or the attending physician is not available to furnish, the outpatient services as usual (see paragraph (b)(3) of this section).

(iii) Covered physician services furnished to hospital inpatients, including services related to inpatient dialysis, by a physician who elects not to continue to receive the MCP during the period of inpatient stay.

(iv) Surgical services, including declotting of shunts, other than the insertion of catheters for patients on maintenance peritoneal dialysis who do not have indwelling catheters.

(v) Needed physician services that are—

(A) Furnished by the physician furnishing renal care or by another physician;

(B) Not related to the treatment of the patient's renal condition; and

(C) Not furnished during a dialysis session or an office visit required because of the patient's renal condition.

(2) For the services described in paragraph (b)(1)(v) of this section, the following rules apply:

(i) The physician must provide documentation to show that the services are not related to the treatment of the patient's renal condition and that additional visits are required.

(ii) The carrier's medical staff, acting on the basis of the documentation and appropriate medical consultation obtained by the carrier, determines whether additional payment for the additional services is warranted.

(3) The MCP is reduced in proportion to the number of days the patient is—

(i) Hospitalized and the physician elects to bill separately for services furnished during hospitalization; or

(ii) Not attended by the physician or his or her substitute for any reason, including when the physician is not available to furnish patient care or when the patient is not available to receive care.

(c) *Determination of payment amount.* The factors used in determining the MCP are related to program experience and to the charging practices of comparable physicians for comparable services. The factors are re-evaluated periodically on the basis of program experience and may be adjusted, as determined necessary by HCFA, to reflect changes in these charging practices and modes of furnishing services.

(d) *Publication of payment amount.* Revisions to the MCP are published in the **Federal Register** in accordance with the Department's established rulemaking procedures.

**§ 414.316 Payment for physician services to patients in training for self-dialysis and home dialysis.**

(a) For each patient, the carrier pays a flat amount that covers all physician services required to create the capacity for self-dialysis and home dialysis.

(b) HCFA determines the amount on the basis of program experience and reviews it periodically.

(c) The payment is made at the end of the training course, is subject to the deductible and coinsurance provisions, and is in addition to any amounts payable under the initial or MCP methods set forth in §§ 414.313 and 414.314, respectively.

(d) If the training is not completed, the payment amount is proportionate to the time spent in training.

**§ 414.320 Determination of reasonable charges for physician renal transplantation services.**

(a) *Comprehensive payment for services furnished during a 60-day period.* (1) The comprehensive payment is subject to the deductible and coinsurance provisions and is for all surgeon services furnished during a period of 60 days in connection with a renal transplantation, including the usual preoperative and postoperative care, and for immunosuppressant therapy if supervised by the transplant surgeon.

(2) Additional sums, in amounts established on the basis of program experience, may be included in the comprehensive payment for other surgery performed concurrently with the transplant operation.

(3) The amount of the comprehensive payment may not exceed the lower of the following:

(i) The actual charges made for the services.

(ii) Overall national payment levels established under the ESRD program and adjusted to give effect to variations in physician's charges throughout the nation. (These adjusted amounts are the maximum allowances in a carrier's service area for renal transplantation surgery and related services by surgeons.)

(4) Maximum allowances computed under these instructions are revised at the beginning of each calendar year to the extent permitted by the lesser of the following:

(i) Changes in the economic index as described in § 405.504(a)(3)(i) of this chapter.

(ii) Percentage changes in the weighted average of the carrier's prevailing charges (before adjustment by the economic index) for—

(A) A unilateral nephrectomy; or

(B) Another medical or surgical service designated by HCFA for this purpose.

(b) *Other payments.* Payments for covered medical services furnished to the transplant recipient by other specialists, as well as for services by the transplant surgeon after the 60-day period covered by the comprehensive payment, are made under the reasonable charge criteria set forth in § 405.502 (a) through (d) of this chapter. The payments for physicians' services in connection with renal transplantations are changed on the basis of program experience and the expected advances in the medical art for this operation.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 8, 1990.

**Louis B. Hays,**

*Acting Administrator, Health Care Financing Administration.*

Approved: April 19, 1990.

**Louis W. Sullivan,**

*Secretary.*

[FR Doc. 90-12971 Filed 6-7-90; 8:45 am]

BILLING CODE 4120-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 661

**[Docket No. 900511-0111]**

### Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

**ACTION:** Notice of reopening.

**SUMMARY:** NOAA announces the reopening of the ocean commercial salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Falcon, Oregon, for three days on May 31 through June 2, 1990. This fishery was closed at midnight, May 27, 1990. Evaluation of landing data following closure of the fishery indicates that sufficient chinook salmon remain to allow three additional days of fishing. This action is intended to maximize the harvest of chinook salmon in this subarea without exceeding the ocean share of salmon allocated to the commercial fishery.

**DATES:** *Effective:* Reopening of the EEZ to commercial salmon fishing between the U.S.-Canada border and Cape Falcon, Oregon, is effective 0001 hours local time May 31, 1990, through 2400 hours local time June 2, 1990. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). *Comments:* Public comments are invited until June 20, 1990.

**ADDRESSES:** Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS

Northwest Regional Director (Regional Director).

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206-526-6140.

**SUPPLEMENTARY INFORMATION:** Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(2) that "If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours."

In its preseason notice of 1990 management measures (55 FR 18894, May 7, 1990), NOAA announced that the 1990 commercial fishery for all salmon except coho in the subarea from the U.S.-Canada border to Cape Falcon, Oregon, would begin on May 1 and continue through the earlier of June 15 or the attainment of a quota of 26,100 chinook salmon. This fishery has been open May 1 through May 14, and May 18 through May 27. Subsequent evaluation of landing data indicates that the latest closure was based on an overestimate of catch.

According to the best available information, commercial catches through May 27 totaled 23,250 chinook salmon, leaving 2,850 chinook salmon available for harvest in the subarea chinook quota. This amount of available chinook salmon has been determined to be sufficient for three additional days of fishing (i.e., May 31 through June 2). This action is being taken in as timely a manner as possible for part of the remaining original season which would have ended no later than June 15, 1990. The Regional Director has determined that the reopening of the commercial fishery in this subarea is consistent with the management objectives for chinook salmon in this subarea. As in the original season (May 1 through June 15), Conservation Zone 1 (the Columbia River mouth) is closed (55 FR 18894, May 7, 1990).

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to 0001 hours local time, May 31, 1990, by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice of the reopening of the commercial salmon fishery in the EEZ from the U.S.-Canada border to Cape Falcon, Oregon, which is effective 0001 hours local time, May 31, 1990, through 2400 hours local time, June 2, 1990. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this reopening. The States of Washington and Oregon will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through June 20, 1990.

## Other Matters

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

## List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

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

Dated: June 5, 1990.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90-13331 Filed 6-5-90; 1:36 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 55, No. 111
Friday, June 8, 1990

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

### Agricultural Marketing Service

### 7 CFR Part 989

[FV-90-150PR]

### Raisins Produced From Grapes Grown in California; Changing the Definition of the Dipped Seedless Varietal Type

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on revising the administrative rules and regulations of the marketing order regulating raisins produced from grapes grown in California. This action would revise the definition of the Dipped Seedless varietal type to include only dehydrated seedless grapes that possess characteristics similar to the Thompson Seedless variety. This action is necessary because dehydrators have begun making raisins from other seedless varieties of grapes which do not have similar characteristics to the traditional Dipped Seedless raisin. This action was unanimously recommended by the Raisin Administrative Committee (Committee), which is responsible for local administration of the marketing order.

**DATES:** Comments must be received by July 9, 1990.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3920.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 25 handlers of raisins who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and a minority of handlers of California raisins may be classified as small entities.

Section 989.10 of the marketing order provides that the Committee, with the approval of the Secretary, may change the list of varietal types. This action would amend § 989.110 of the rules and regulations by revising the definition of the Dipped Seedless varietal type.

Varietal type is defined in § 989.10 of the order to mean raisins generally recognized as possessing characteristics differing from other raisins in a degree sufficient to make necessary or desirable separate identification and classification. Therefore, a particular varietal type of raisin defined in the rules and regulations would include raisins with similar characteristics and market uses. Raisins are separated into varietal types for the purpose of applying the order's quality and volume regulations.

This action could also have an impact in connection with volume regulations. For example, more production could be reported in the Other Seedless and Monukka categories and less production in the Dipped Seedless categories.

Section 989.110(b) currently provides that the Dipped Seedless varietal type includes all raisins produced by artificial dehydration of seedless grapes which, in order to expedite drying, have been dipped or sprayed with water only after such grapes have been removed from the vine. Seedless grapes would include Thompson Seedless, Ruby Seedless, Kings Ruby Seedless, Flame Seedless, and Monukka. Therefore, under the current definition of Dipped Seedless, all of the above-listed grape varieties that are dehydrated using the method to make Dipped Seedless raisins are classified as such.

Historically, dehydrators have used the Natural Thompson Seedless grape variety (green seedless grapes) to make raisins which are categorized as Dipped Seedless raisins. The marketing order defines a dehydrator as any person who produces raisins by dehydrating grapes by artificial means (7 CFR 989.12). Recently, dehydrators have begun to dehydrate Ruby Seedless, Kings Ruby Seedless, Flame Seedless, and Monukka grapes (red seedless grapes) to make raisins. Dehydrators have reported, as required by the current definition and the reporting requirements, these dehydrated raisins as belonging to the Dipped Seedless varietal type category.

However, dehydrated Ruby Seedless, Kings Ruby Seedless, and Flame Seedless grapes have characteristics that more closely resemble those in the Other Seedless varietal type, and dehydrated Monukka grapes have characteristics that more closely resemble those in the Monukka varietal type. Therefore, the Committee has

recommended that the definition of the Dipped Seedless varietal type include only dehydrated seedless grapes that possess characteristics similar to the Thompson Seedless variety. If this proposal is adopted, raisins made from dehydrated Ruby Seedless, Kings Ruby Seedless, and Flame Seedless grapes would be more appropriately catagorized in the Other Seedless raisin varietal type, and raisins made from dehydrated Monukka grapes would be more appropriately categorized in the Monukka varietal type. Thus, no additional changes in the varietal type definitions are necessary.

Based on the above information, the Administrator of the AMS has determined that issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 7 CFR Part 989**

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is proposed to be amended as follows:

## PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

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

### Subpart—Administrative Rules and Regulations

2. Section 989.110 is amended by revising paragraph (b) to read as follows:

**§ 989.110 Varietal types.**

* * * * *

(b) Dipped Seedless includes all raisins produced by artificial dehydration of seedless grapes that possess the characteristics similar to Thompson Seedless grapes which, in order to expedite drying, have been dipped in or sprayed with water only after such grapes have been removed from the vine.

* * * * *

Dated: June 4, 1990.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 90–13335 Filed 6–7–90; 8:45 am]

BILLING CODE 3410-02-M

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 225

**[Regulation Y; Docket No. R-0694]**

### Leasing Personal Property; Correction

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** The document corrects a notice of proposed rulemaking which appeared in the **Federal Register** on June 1, 1990 (55 FR 22348).

**FOR FURTHER INFORMATION CONTACT:** Scott G. Alvarez, Assistant General Counsel (202/452–3583), Thomas M. Corsi, Attorney (202/452–3275), or Donna R. Nordenberg, Attorney (202/452–3281), Legal Division; or Sidney M. Sussan, Assistant Director (202/452–2638), Division of Banking Supervision and Regulation, Board of Governors. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452–3544).

The following correction is made to FR Doc. 90–12658 published in the **Federal Register** on June 1, 1990 (55 FR 22348).

**§ 225.25 [Corrected]**

On page 22351, in the first column, under § 225.25, in the 13th line of paragraph (b)(5)(ii) introductory text, "exceeds 1 percent" should read "exceeds 100 percent."

As a convenience to the reader, new paragraph (b)(5)(ii) of § 225.25 is republished to read as follows:

**§ 225.25 List of permissible nonbanking activities.**

* * * * *

(b) * * *

(5) * * *

(ii) *Leasing tangible personal property.* Leasing tangible personal property or acting as agent, broker, or adviser in leasing such property where, in calculating the return described in paragraph (b)(5)(i)(D), the lessor relies on rental payments, estimated tax benefits (as described in paragraph (b)(5)(i)(D)(*2*)), and an estimated residual value of the property at the expiration of the initial term of the lease that exceeds 20 percent, but in no event exceeds 100 percent, of the acquisition cost of the property to the lessor, if—

(A) The activity otherwise meets the requirements of paragraph (b)(5)(i);

(B) The aggregate amount of leases in which the bank holding company, or any of its bank or nonbank subsidiaries, relies on an estimated residual value in excess of 20 percent of the acquisition cost of the property is limited to no more than 10 percent of the bank holding company's total consolidated assets;

(C) The minimum initial lease term is 90 days;

(D) The bank holding company's leasing affiliate maintains capitalization fully adequate to meet its obligations and support its activities, and commensurate with industry standards for comparable leasing activities; and

(E) The bank holding company maintains separately identifiable records of the leasing activities conducted under paragraphs (b)(5)(i) and (b)(5)(ii) where it conducts leasing activities under the authority of both paragraphs.

By order of the Board of Governors of the Federal Reserve System, June 6, 1990.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 90–13437 Filed 6–7–90; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 90-CE-22-AD]**

### Airworthiness Directives; FUJI Heavy Industries, Ltd., Model FA-200 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new Airworthiness Directive (AD), applicable to FUJI Heavy Industries, Ltd., Model FA-200 airplanes, which would require inspections and modifications, as applicable, of the control column tube and the rudder pedal system. Fracture of the control column during aerobatic flight, and possible jamming of the rudder pedals due to over travel have been reported. The proposed actions will preclude loss of control of the airplane.

**DATES:** Comments must be received on or before July 30, 1990.

**ADDRESSES:** Service Bulletin (S/B) No. 200–002, Revision C, dated June 5, 1989, SB No. 200–008, Revision B, dated May 30, 1989, Technical Bulletin (T/B) No. 200–020, dated May 30, 1989, and TB No. 200–022, dated June 5, 1989, applicable to this AD, may be obtained from FUJI Heavy Industries, Ltd., Subaru Building, Shinjuku, Tokyo, Japan. This

information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-22-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** Donald Dirian, FAA, Small Transport Section, Los Angeles Aircraft Certification Office, 3229 E. Spring St., Long Beach, California 90806-2425; Telephone (213) 988-5234.

**SUPPLEMENTARY INFORMATION:**

**Comments invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-22-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**Discussion**

It has been reported that a section of the control column assembly on a FUJI Model FA-200 airplane fractured during an aerobatic flight. The fracture resulted from a fatigue crack which emanated at the gust lock pin holes. There is also the possibility that the rudder control system on these Model airplanes may jam due to improper adjustment of the rudder pedal stop, or incorrect brake master cylinder rod length and corresponding brake link over-centering force.

As a result, FUJI Heavy Industries, Ltd., has issued S/B No. 200-008, Revision B, dated May 30, 1989, which requires initial and repetitive inspections of the gust lock pin holes and adjacent area for cracks or burrs, and S/B No. 200-002, Revision C, dated June 5, 1989, which requires initial and repetitive inspections for proper rudder pedal travel stop clearance, correct brake master cylinder rod length, and sufficient brake link over-centering force.

The above SBs also specify the appropriate actions necessary to correct any defects that are discovered.

The Japanese Civil Aviation Bureau (JCAB), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Japan, has classified these service bulletins and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Japanese registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the JCAB combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of FUJI Heavy Industries, Ltd., Service Bulletin No. 200-008, Revision B, dated May 30, 1989, and Service Bulletin No. 200-002, Revision C, dated June 5, 1989, and the mandatory classification of these service bulletins by the JCAB. Based on the foregoing, the FAA believes that the condition addressed by S/B No. 200-008, Revision B, and S/B No. 200-002, Revision C is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD, applicable to Model FA-200 airplanes, would require inspections and rework in accordance with the above referenced service instructions.

The FAA has determined that at the present time there are no U.S. registered airplanes affected by the proposed AD. The cost of the inspections required by the proposed AD is estimated to be $80 per airplane. The total cost is estimated to be zero at this time.

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

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

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

**Fuji Heavy Industries Ltd:** Applies to Model FA-200 (all serial numbers) airplanes certificated in any category.

*Compliance:* Required as indicated in the body of the AD after the effective date of this AD, unless already accomplished. To preclude the loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) and every 100 hours TIS thereafter:

(1) Inspect the gust lock pin holes in accordance with FUJI Service Bulletin (S/B) No. 200-008, Revision B, dated May 30, 1989, for burrs and cracks in and around the gust lock pin holes using a 10x magnifying glass. Before further flight:

(i) Remove burrs in accordance with the instructions of S/B No. 200-008, Revision B; and

(ii) If cracks are found, replace the control column with a serviceable airworthy unit.

(2) Inspect the rudder control system in accordance with S/B No. 200-002, Revision C, dated June 5, 1989. Before further flight:

(i) Adjust and/or modify rudder stop clearance if required in accordance with the instructions in S/B No. 200-002, Revision C.

(ii) Adjust the brake master cylinder rod length in accordance with the instructions in S/B No. 200-002, Revision C.

(iii) If the brake link over centers when a force of less than 44lbs. (20 kg), is applied, replace the defective parts in accordance with the instructions in S/B No. 200-002, Revision C, and retest.

(b) Upon incorporating an improved control column in accordance with FUJI Technical Bulletin (T/B) No. 200-020, dated May 30, 1989, the repetitive inspections of the control column specified in paragraph (a)(1) of this AD may be discontinued.

(c) Upon incorporation of T/B No. 200-022, dated June 5, 1989;

(1) The inspection interval for verifying the cylinder rod length specified in paragraph (a)(2)(ii) of this AD may be increased to 1,000 hours TIS; and,

(2) The repetitive brake link over centering test specified in paragraph (a)(2)(iii) of this AD may be discontinued.

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

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, 3229 E. Spring St., Long Beach, California 90806-2425; Telephone (213) 988-5200.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to FUJI Heavy Industries, Ltd., Subaru Building, Shinjuku, Toyko, Japan; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 29, 1990.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-13304 Filed 6-7-90; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 90-ASW-23]**

## Proposed Revision of Control Zones: Albuquerque, NM and Roswell, NM

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revise the legal descriptions of the Albuquerque and Roswell, NM, Control Zones. This amendment is necessary in order to provide proper steps for informing the users when the control zones would not be in effect if 24-hour radio communications or 24-hour weather reporting capability was temporarily lost. The intended effect of this proposal is to provide the users of the Albuquerque International and the Roswell Industrial Air Center Airports on the rare occasions when the respective control zones would not be in effect.

**DATES:** Comments must be received on or before July 23, 1990.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 90-ASW-23, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Bruce C. Beard, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASW-23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

### The Proposal

The FAA is considering an amendment to § 71.171 of the Federal Aviation Regulations (14 CFR part 71) to revise the Albuquerque, NM, and Roswell, NM, Control Zones. If 24-hour radio communications or 24-hour weather reporting capability is temporarily lost, the airports would not meet the requirements for a control zone during these short periods. This amendment is necessary so proper steps can be taken in order to inform the users when the control zone would not be in effect. The intended effect of this proposal is to provide the users of the Albuquerque International and the Roswell Industrial Air Center Airports of the extremely rare occasions when the respected control zones would not be in effect. This would be an editorial change only; there would be no reduction in service currently being provided at these two airports. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

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

that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

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

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

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

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Albuquerque, NM [Amended]**

By adding to the end of the legal description: "This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory."

**§ 71.171 [Amended]**

3. Section 71.171 is amended as follows:

**Roswell, NM [Amended]**

By adding to the end of the legal description: "This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory."

Issued in Fort Worth, TX on May 21, 1990.

**Larry L. Craig,**

*Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 90-13305 Filed 6-7-90; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 90-ASW-33]**

## Proposed Revision of Transition Area: New Orleans, LA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revise the transition area located at New Orleans, LA. The development of a new area navigation (RNAV) standard instrument approach procedure (SIAP) to the Waterford Heliport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing this new RNAV SIAP to the Waterford Heliport. Coincident with this proposal would be the changing of the status of the heliport from visual flight rules (VFR) to instrument flight rules (IFR).

**DATES:** Comments must be received on or before July 23, 1990.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 90-ASW-33, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Bruce C. Beard, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to airspace Docket No. 90-ASW-33." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulation s (14 CFR part 71) to revise the transition area located at New Orleans, LA. The development of a new RNAV SIAP to the Waterford Heliport has made this proposal necessary. This would be a point in space approach, meaning the approach will not be flown all the way to the Waterford Heliport. Aircraft executing this approach would proceed VFR, weather conditions permitting, after the missed approach point (MAP), to the heliport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing this new RNAV SIAP to the Waterford Heliport. Coincident with this proposal would be the changing of the status of the heliport from VFR to IFR.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

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

procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

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

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

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

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**New Orleans, LA [Amended]**

By adding to the end of the legal description: and within a 6-mile radius of the Waterford Heliport (latitude 29°59'07"N., longitude 90°28'02"W.).

Issued in Fort Worth, TX on May 21, 1990.

**Larry L. Craig,**

*Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 90-13306 Filed 6-7-90; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 382

**[Dockets 46811, 46812; Notice No. 90-21]**

**RINs 2105-AB60, 2105-AB61**

## Nondiscrimination on the Basis of Handicap in Air Travel

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Extension of comment periods.

**SUMMARY:** At the same time as it published its final rule to implement the Air Carrier Access Act of 1986, the Department published three notices seeking comment on related issues. In response to a request from the Regional Airline Association, the Department is extending the comment periods for two of these notices to July 20, 1990.

**DATES:** This extension is effective June 4, 1990. Comments should be received by July 20, 1990. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Comments should be sent to Docket Clerk, Dockets No. 46811 or 46812 as applicable, Department of Transportation, 400 7th Street SW., room 4107, Washington, DC 20590. For the convenience of persons who will be reviewing the dockets, it is requested that commenters provide duplicate copies of their comments. Comments will be available for inspection at this address Monday through Friday from 9 a.m. through 5:30 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Ashby, Deputy Assitant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., room 10424, Washington, DC 20590. Telephone 202-366-9306 (voice); 202-755-7687 (TDD).

**SUPPLEMENTARY INFORMATION:** The Department of Transportation published its final rule to implement the Air Carrier Access Act of 1986 on March 6, 1990. At the same time, it published three notices seeking comment on related issues. These included a supplemental notice of proposed rulemaking (SNPRM), concerning terminal transportation systems, standards for boarding chairs, and substitute transportation service (55 FR 8076, Docket No. 46812); an advance notice of proposed rulemaking (ANPRM), concerning small aircraft boarding devices, accessible lavatories for narrowbody aircraft, and other issues (55 FR 8078, Docket No. 46811), and a notice of proposed rulemaking (NPRM), concerning accessibility requirements for airport operators (55 FR 8081; Docket No. 46813). The comment period for the first and third of these notices ended June 4; the comment period for the second is scheduled to end July 5.

On June 1, the Regional Airline Association (RAA), a trade association of regional and commuter air carriers, asked for a 45-day extension of the comment periods. It said that the personnel of its carriers who would have to work on the comments to these notices were essentially the same personnel who were working to meet the June 4 compliance date for a substantial part of the Air Carrier Access Act final rule. These personnel had not had time to prepare adequate comments on the notices, RAA said.

The Department believes that this concern has merit, at least with respect to the ANPRM and the SNPRM. Since the comments from smaller air carriers are needed with respect to many of the issues in the ANPRM and the SNPRM, the Department believes it would be useful to extend their comment periods to allow these comments to be received. The NPRM concerns the responsibilities of airport operators under section 504 of the Rehabilitation Act, rather than those of carriers under the Air Carrier Access Act. For this reason, an extension of the comment period for the NPRM does not seem necessary in order to respond to RAA's concerns.

Consequently, the new comment closing date for the ANPRM (Docket No. 46811) and the SNPRM (Docket No. 46812) will be July 20, 1990.

Issued this 4th day of June, 1990 at Washington, DC.

**Phillip D. Brady,**

*General Counsel.*

[FR Doc. 90-13276 Filed 6-7-90; 8:45 am]

BILLING CODE 4910-62-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 333, 444, and 448

**[Docket No. 76N-482B]**

**RIN 0905-AA06**

## Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph For OTC First Aid Antibiotic Drug Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that would amend the final monograph for over-the-counter (OTC) first aid antibiotic drug products in 21 CFR part 333 that establishes conditions under which these drug products are generally recognized as safe and effective and not misbranded. The amendment would allow several antibiotic combinations of bacitracin zinc, polymyxin B sulfate, and neomycin sulfate to include a suitable local anesthetic as an active ingredient. FDA is concurrently amending the antibiotic regulations in 21 CFR parts 444 and 448 to be consistent with the

monograph for OTC first aid antibiotic drug products. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

**DATES:** Written comments by August 7, 1990. Requests for an informal conference on proposed changes in 21 CFR 444.542l, 448.513a, and 448.513c by July 9, 1990.

**ADDRESSES:** Written comments or requests for conference on proposed changes in 21 CFR 444.542l, 448.513a, and 448.513c to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of December 11, 1987 (52 FR 47312), FDA issued a final monograph for OTC first aid antibiotic drug products in subpart B of 21 CFR part 333. The monograph provides for combinations of bacitracin ointment or bacitracin-neomycin sulfate-polymyxin B sulfate ointment and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient (21 CFR 333.120(b) (1) and (2)). In the **Federal Register** of August 18, 1989 (54 FR 34188), FDA issued a proposed amendment, and in the **Federal Register** of March 15, 1990 (55 FR 9721), FDA issued a final amendment to the final monograph for OTC first aid antibiotic drug products to allow bacitracin-polymyxin B sulfate topical aerosol to include a suitable local anesthetic as an active ingredient (§ 333.120(b)(3)).

On October 30, 1989, FDA received three citizen petitions (Docket Nos. 76N-482B/CP0001, CP0002, and CP0003) requesting the amendment of 21 CFR part 333 to include a suitable local anesthetic in several antibiotic combinations containing bacitracin zinc, polymyxin B sulfate, and neomycin sulfate. Specifically, the petitions requested that the following paragraphs be added to § 333.120(b):

(3) Bacitracin zinc-neomycin sulfate-polymyxin B sulfate ointment containing, in each gram, in a suitable ointment base the following:

(i) 500 units of bacitracin zinc, 3.5 milligrams of neomycin, 5,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient; or

(ii) 400 units of bacitracin zinc, 3.5 milligrams of neomycin, 5,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient; or

(iii) 500 units of bacitracin zinc, 3.5 milligrams of neomycin, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient;

*Provided,* that it meets the tests and methods of assay in section 448.513c(b).

(4) Bacitracin zinc-polymyxin B sulfate ointment containing, in each gram, 500 units of bacitracin zinc, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable ointment base: *Provided,* that it meets the tests and methods of assay in § 448.513a(b).

(5) Neomycin sulfate-polymyxin B sulfate cream containing, in each gram, 3.5 milligrams of neomycin, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable vehicle: *Provided,* that it meets the tests and methods of assay in § 444.542l(b).

The citizen petitions noted that each of the combinations of first aid antibiotic active ingredients and local anesthetic active ingredients listed under 21 CFR 333.120(b) contain the ingredient bacitracin. The petitions contended that formulations containing bacitracin and formulations containing bacitracin zinc may be interchanged freely with no adverse effects on safety or efficacy. The petitions noted that bacitracin zinc, as well as bacitracin, have been utilized in OTC drug products for many years, and argued that it is unnecessary to restrict the usage of the combination together with a topical anesthetic to the bacitracin base alone.

After reviewing the citizen petitions, the agency concludes that there is sufficient evidence to generally recognize the requested combinations as safe and effective and not misbranded for OTC first aid antibiotic-anesthetic use. In the final monograph for OTC first aid antibiotic drug products, FDA accepted the appropriateness of the combination of OTC topical products containing antibiotics and a local analgesic, and expressly permitted the combination of certain antibiotic active ingredients with any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient (52 FR 47312 at 47323). This acceptance was based, in part, on the facts that combination topical antibiotic products containing a local anesthetic have a marketing history that predates the OTC drug review and the antibiotic regulations in §§ 448.510a and 448.510e allow certain antibiotic-anesthetic combinations.

In the advance notice of proposed rulemaking for OTC external analgesic drug products (December 4, 1979; 44 FR 69768), the Advisory Review Panel on OTC Topical Analgesic, Antirheumatic, Otic, Burn, and Sunburn Prevention and Treatment Drug Products recommended as Category I combinations containing certain external analgesic active ingredients and Category I antimicrobial active ingredients provided the product was labeled for the concurrent symptoms involved (44 FR 69865). In the tentative final monograph for OTC external analgesic drug products, the agency proposed such combinations as Category I (February 8, 1983; 48 FR 5852 at 5868). That rulemaking has not been finalized to date. However, in the final monograph for OTC first aid antibiotic drug products, the agency stated that the combination of a first aid antibiotic and an external analgesic, anesthetic, or antipruritic is similar in action and intended use to the combination of a topical antimicrobial and an external analgesic, anesthetic, and antipruritic (52 FR 47312 at 47319).

In addition, the agency stated that combinations of first aid antibiotic and local anesthetic ingredients provide rational concurrent therapy for a significant proportion of the target population and that the combination is suitable for OTC use under adequate directions for use and warnings against unsafe use, as required under § 330.10(a)(4)(iv) (52 FR 47319).

In the final monograph for OTC first aid antibiotic drug products, the agency included only those topical antibiotic-anesthetic combinations that included Category I ingredients from both the external analgesic and first aid antibiotic rulemakings and that are the subject of a current antibiotic monograph in 21 CFR parts 444 and 448 (52 FR 47319). The several combinations of antibiotics with a local anesthetic requested by the petitions were not the subject of existing antibiotic regulations and, consequently, such combinations were not included in the final monograph. Nonetheless, the agency notes that similar antibiotic combinations (without provisions for use with local anesthetic) are currently included both in the final monograph for OTC first aid antibiotic drug products (i.e., § 333.120 (a)(2), (a)(5), (a)(6), and (a)(10)) and in the existing antibiotic regulations (i.e., §§ 448.513a, 448.513c, and 444.542l). The agency agrees with the citizen petitions that these combinations of antibiotics could be combined with any single generally recognized as safe and effective amine or "caine"-type local anesthetic without

any adverse effects on safety or efficacy. These products would be labeled in accordance with § 333.160.

Therefore, the agency is proposing to amend the existing antibiotic regulations in §§ 444.542l(a)(1), 448.513a(a)(1), and 448.513c(a)(1) to provide for such combinations and to include these combinations in § 333.120(b) of the final monograph for OTC first aid antibiotic drug products. Because a previous amendment to the final monograph added paragraph (3) under § 333.120(b) (55 FR 9721 at 9722), the agency will number the new sections being proposed for addition to § 333.120 as paragraphs (b)(4) through (b)(6) instead of paragraphs (b)(3) through (b)(5) as requested by the petitions.

The agency notes that one of the petitions requested three ointment combinations containing various potencies of bacitracin zinc-neomycin sulfate-polymyxin B sulfate. Two of the potencies correspond to the potencies currently listed in § 333.120(a)(5)(ii) and (a)(5)(iii) for bacitracin zinc-neomycin sulfate-polymyxin B sulfate ointment. The agency notes, however, that the petition did not request a local anesthetic be allowed with the monograph combination in § 333.120(a)(5)(i) and requested another combination not currently included in the monograph. That combination contains 500 units of bacitracin zinc, 3.5 milligrams of neomycin, and 5,000 units of polymyxin B. The agency considers this additional potency to be sufficiently similar to those currently included in the monograph and is proposing to add it to the monograph as new § 333.120(a)(5)(iii). The current § 330.120(a)(5)(iii) is being redesignated as paragraph (a)(5)(iv). The agency is also adding bacitracin zinc-neomycin sulfate-polymyxin B sulfate-local anesthetic combinations in § 333.120(b)(1) that correspond to the bacitracin zinc-neomycin sulfate-polymyxin B sulfate combinations without a local anesthetic in § 333.120(a)(5). The potency of bacitracin zinc in these new sections will be listed as 500 units of bacitracin, not 500 units of bacitracin zinc as requested by the petitions, for consistency with other portions of the monograph. The agency is also amending § 448.513c(a)(1) to list all of the potencies of these various combinations. Finally, the agency is amending §§ 444.542l(a)(1), 448.513a(a)(1), and 448.513c(a)(1) to provide for the inclusion of a local anesthetic in these products.

The agency advises that any final rule resulting from this proposed rule will be effective 12 months after its date of publication in the **Federal Register**. On or after that date, any OTC drug product that is not in compliance may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the rule that is repackaged or relabeled after the effective date of the rule must be in compliance with the rule regardless of the date the product was initially introduced into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC first aid antibiotic drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC first aid antibiotic drug products is not expected to pose such an effect on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC first aid antibiotic drug products. Comments regarding the impact of this rulemaking on OTC first aid antibiotic drug products should be accompanied by appropriate documentation.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before August 7, 1990, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Three copies of all comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons may, on or before July 9, 1990, submit to the Dockets Management Branch a request for an informal conference on the proposed changes in §§ 444.542l(a)(1), 448.513a(a)(1), and 448.513c(a)(1). The participants in an informal conference, if one is held, will have until August 7, 1990, or 30 days after the date of the conference, whichever is later, to submit their comments.

**List of Subjects**

*21 CFR Part 333*

First aid antibiotic drug products, Labeling, Over-the-counter drugs.

*21 CFR Part 444*

Antibiotics.

*21 CFR Part 448*

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that subchapter D of chapter I of title 21 of the Code of Federal Regulations be amended in parts 333, 444, and 448 as follows:

## PART 333—TOPICAL ANTIMICROBIAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 333 continues to read as follows:

**Authority:** Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 333.120 is amended by redesignating paragraph (a)(5)(iii) as paragraph (a)(5)(iv) and by adding new paragraphs (a)(5)(iii), (b)(4), (b)(5), and (b)(6) to read as follows:

**§ 333.120 Permitted combinations of active ingredients.**

* * * * *

(a) * * *

(5) * * *

(iii) 500 units of bacitracin, 3.5 milligrams of neomycin, and 5,000 units of polymyxin B; or

* * * * *

(b) * * *

(4) Bacitracin zinc-neomycin sulfate-polymyxin B sulfate ointment containing, in each gram, in a suitable ointment base the following:

(i) 400 units of bacitracin, 3 milligrams of neomycin, 8,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient; or

(ii) 400 units of bacitracin, 3.5 milligrams of neomycin, 5,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient; or

(iii) 500 units of bacitracin, 3.5 milligrams of neomycin, 5,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient; or

(iv) 500 units of bacitracin, 3.5 milligrams of neomycin, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient; *Provided,* That it meets the tests and methods of assay in § 448.513c(b) of this chapter.

(5) Bacitracin zinc-polymyxin B sulfate ointment containing, in each gram, 500 units of bacitracin, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable ointment base; *Provided,* That it meets the tests and methods of assay in § 448.513a(b) of this chapter.

(6) Neomycin sulfate-polymyxin B sulfate cream containing, in each gram, 3.5 milligrams of neomycin, 10,000 units of polymyxin B, and any single generally recognized as safe and effective amine or "caine"-type local anesthetic active ingredient in a suitable vehicle; *Provided,* That it meets the tests and methods of assay in § 444.542l(b) of this chapter.

## PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR Part 444 continues to read as follows:

**Authority:** Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

4. Section 444.542l is amended by revising paragraph (a)(1) to read as follows:

**§ 444.542l Neomycin sulfate-polymyxin B sulfate cream.**

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Neomycin sulfatepolymyxin B sulfate cream is a cream containing, in each gram, neomycin sulfate equivalent to 3.5 milligrams of neomycin and polymyxin B sulfate equivalent to 10,000 units of polymyxin 8 in a suitable and harmless vehicle. It may contain a suitable local anesthetic. Its neomycin sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of neomycin that it is represented to contain. Its polymyxin B sulfate content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. The neomycin sulfate used conforms to the standards prescribed by § 444.42(a)(1). The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1) of this chapter.

* * * * *

## PART 448—PEPTIDE ANTIBIOTIC DRUGS

5. The authority citation for 21 CFR part 448 continues to read as follows:

**Authority:** Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

6. Section 448.513a is amended by revising paragraph (a)(1) to read as follows:

**§ 448.513a Bacitracin zinc-polymyxin B sulfate ointment.**

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Bacitracin zinc-polymyxin B sulfate ointment contains bacitracin zinc and polymyxin B sulfate in a suitable and harmless ointment base. It may contain a suitable local anesthetic. Each gram contains 500 units of bacitracin and 10,000 units of polymyxin B. Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of bacitracin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. Its moisture content is not more than 0.5 percent. The bacitracin zinc used conforms to the standards prescribed by § 448.13(a)(1). The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1).

* * * * *

7. Section 448.513c is amended by revising paragraph (a)(1) to read as follows:

**§ 448.513c Bacitracin zinc-neomycin sulfate-polymyxin B sulfate ointment; bacitracin zinc-neomycin sulfatepolymyxin B sulfate hydrocortisone ointment.**

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* This drug, in a suitable and harmless ointment base, contains in each gram the following:

(i) 400 units of bacitracin, 3 milligrams of neomycin, and 8,000 units of polymyxin B; or

(ii) 400 units of bacitracin, 3.5 milligrams of neomycin, and 5,000 units of polymyxin B, with or without 10 milligrams of hydrocortisone; or

(iii) 500 units of bacitracin, 3.5 milligrams of neomycin, and 5,000 units of polymyxin 8; or

(iv) 500 units of bacitracin, 3.5 milligrams of neomycin, and 10,000 units of polymyxin B.

It may contain a suitable local anesthetic except for combinations in paragraph (a)(1)(ii) of this section that contain hydrocortisone. Its bacitracin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of bacitracin that it is represented to contain. Its neomycin content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of neomycin that it is represented to contain. Its polymyxin B content is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of polymyxin B that it is represented to contain. Its moisture content is not more than 0.5 percent. The bacitracin zinc used conforms to the standards prescribed by § 448.13(a)(1). The neomycin sulfate used conforms to the standards prescribed by § 444.42(a)(1) of this chapter. The polymyxin B sulfate used conforms to the standards prescribed by § 448.30(a)(1).

* * * * *

Dated: May 15, 1990.

**James S. Benson,**

*Acting Commissioner of Food and Drugs.*

[FR Doc. 90-13316 Filed 6-7-90; 8:45 am]

BILLING CODE 4160-01-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 674**

**RIN 0648-AC57**

## High Seas Salmon Fishery off Alaska

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

**ACTION:** Notice of availability of an amendment to a fishery management plan and request for comments.

**SUMMARY:** NOAA issues this notice that the North Pacific Fishery Management Council has submitted Amendment 3 to the Fishery Management Plan for the Salmon Fisheries in the Exclusive Economic Zone off the Coast of Alaska (FMP) and is requesting comments from the public. Copies of Amendment 3, the environmental assessment, and the regulatory impact review may be obtained from the address given below.

**DATES:** Comments will be accepted until July 2, 1990.

**ADDRESSES:** Send comments to the Regional Director, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1168.

**FOR FURTHER INFORMATION CONTACT:** Aven M. Andersen (NOAA, National Marine Fisheries Service, Alaska Region) 907-586-7228.

**SUPPLEMENTARY INFORMATION:** Amendment 3 to the FMP was prepared under the provisions of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Amendment 3 (1) updates the FMP with the best available scientific information, (2) corrects minor errors, (3) generally defers regulation of the salmon fisheries in the EEZ off the coast of Alaska to the State of Alaska, (4) provides for consistency with the Pacific Salmon Commission, (5) considers fish habitat, and (6) addresses fishing vessel safety issues.

The "receipt date" for Amendment 3 is June 3, 1990; Amendment 3 and associated environmental and regulatory assessments are available for public review and comment until July 2, 1990. Proposed regulations for Amendment 3 will be filed with the Office of the **Federal Register** within 15 days of the receipt date. Copies of Amendment 3 and the environmental and regulatory assessments can be obtained from the above address.

The Magnuson Act requires the Secretary of Commerce (Secretary) to review and approve, disapprove, or partially disapprove any fishery management plan or plan amendment submitted by a Regional Fishery Management Council. The Act also requires that the Secretary, upon receiving a plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve, disapprove, or partially disapprove this amendment.

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

Dated: June 5, 1990.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 90-11332 Filed 6-5-90; 1:36 pm]

BILLING CODE 3510-22-M

# Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[TB-90-006]

### National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

*Name:* National Advisory Committee for Tobacco Inspection Services.

*Date:* June 25, 1990.

*Time:* 1:00 p.m.

*Place:* Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27607.

*Purpose:* To review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.* ), to hear persons who have asked to address the Committee and who have been scheduled to do so, and to discuss the level of tobacco inspection and related services for the 1990-91 selling season.

The meeting is open to the public. Persons other than members who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: May 31, 1990.

**Daniel D. Haley,**

*Administrator.*

[FR Doc. 90-13286 Filed 6-7-90; 8:45 am]

BILLING CODE 3410-02-M

## COMMISSION ON CIVIL RIGHTS

### Maine Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3 p.m. on June 25, 1990, at the Marriott Hotel, 200 Sable Oaks Drive, South Portland, Maine 20074. The purpose of the meeting is (1) to discuss the status of the Commission; (2) hear a report on civil rights progress and/or problems in the State; and (3) to plan a project for Fiscal Year 1990.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Grayce Studley (207/874-8135) or John I. Binkley, Director, Eastern Regional Division at (202/523-5264), TDD (202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 4, 1990.

**Wilfredo J. Gonzalez,**

*Staff Director.*

[FR Doc. 90-13342 Filed 6-7-90; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Visiting Committee on Advanced Technology; Meeting

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Institute of Standards and Technology Visiting Committee on Advanced Technology will meet Monday, June 25, 1990, from 1 p.m. to 5 p.m., and Tuesday, June 26, 1990, from 8:30 a.m. to 11:45 a.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The discussion on NIST Budget scheduled to begin at 3:30 p.m. and ending at 5 p.m. on June 25, 1990, will be closed.

**DATES:** The meeting will convene June 25, 1990, at 1 p.m. and will adjourn for the day at 5 p.m. The meeting will resume at 8:30 a.m. on June 26, 1990, and will end at 11:45 a.m.

**ADDRESSES:** The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Dale E. Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2158.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 24, 1990, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: May 31, 1990.

**John W. Lyons,**

*Director.*

[FR Doc. 90-13329 Filed 6-7-90; 8:45 am]

BILLING CODE 3510-13-M

## Malcolm Baldrige National Quality Award's Panel of Judges; Meeting

**AGENCY:** National Institute of Standards and Technology, DoC.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that there will be a closed meeting of the Panel of Judges of the Malcolm Baldrige National Quality Award from Thursday, June 14, through Friday, June 15, 1990. The Panel of Judges is composed of nine members prominent in the field of quality management and appointed by the Director of the National Institute of Standards and Technology. The purpose of this meeting is to review the 1990 Award applications and to select applicatons to be considered in the second stage of the evaluation. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in cónfidence.

**DATES:** The meeting will convene June 14, 1990 at 8:30 a.m. and adjourn at approximately 2 p.m. on June 15, 1990. The entire meeting will be closed.

**ADDRESSES:** The meeting will be held at Juran Institute, 11 River Road, Wilton, CT 06897-0811.

**FOR FURTHER INFORMATION CONTACT:** Dr. Curt W. Reimann, Associate Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2036.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 11, 1990 that the meeting of the Panel of Judges will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94-409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: May 31, 1990.

John Lyons,

*Director.*

[FR Doc. 90-13330 Filed 6-7-90; 8:45 am]

BILLING CODE 3510-13-M

## National Oceanic and Atmospheric Administration

**Docket Number 900517-0117**

## Announcement of Opportunities for Funding Research in the National Estuarine Reserve Research System for Fiscal Year 1991

**AGENCY:** Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** In accordance with Department of Commerce Administrative Order (DAO) 203-26, this notice solicits proposals for Federal funding under section 315(e)(1)(B) of the Coastal Zone Management Act of 1972 (CZMA) for research in the National Estuarine Reserve Research System for Fiscal Year 1991. This notice sets forth what information must be submitted, funding priorities, and selection criteria. All proposals received in response to this announcement must follow the guidelines provided in this announcement, address the topics discussed in this announcement, and be postmarked no later than September 1, 1990.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Uravitch, Chief, Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235; ATTN: FY91 NERRS Research; 202/673-5126.

**SUPPLEMENTARY INFORMATION:**

### I. Authority and Background

Section 315 of the CZMA, 16 U.S.C. 1461, establishes the National Estuarine Reserve Research System (formerly known as the National Estuarine Sanctuary Program). Subsection 315 (e)(1)(B) authorizes the Marine and Estuarine Management Division (MEMD) of the Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), to make grants to any coastal state or public or private person for purposes of supporting research and monitoring within the NERRS.

### II. Information on Established National Estuarine Research Reserves

The NERRS consists of carefully selected estuarine areas of the United States which are designated, preserved, and managed for research and educational purposes. The reserves are chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921 (49 FR 125:26502-26520).

The uniqueness of each NERRS site lies in its suitability for supporting a wide range of beneficial uses of ecological, economic, recreational, and aesthetic value which are dependent upon maintenance of a healthy ecosystem. Each site provides critical habitat for a wide range of ecologically and commercially important species of fish, shellfish, birds, and aquatic and terrestrial wildlife. However, these varied activities occurring both within and outside the reserves have caused varying levels of impacts that threaten the health and survival of natural resources. On the national level, these impacts have been classified into five major environmental problem areas: Toxic contamination, eutrophication, pathogen contamination, habitat loss and alteration, and changes in living resources.

Each reserve has been designed to be large enough and protected well enough to ensure its effectiveness as a conservation unit and as a site for long-term research. Since all of the reserves are part of a national system, they collectively provide a unique opportunity to address research questions and estuarine management issues of national significance.

Eighteen national estuarine research reserves have been established:

Weeks Bay, Alabama
Elkhorn Slough, California
Tijuana River, California
Apalachicola River, Florida
Rookery Bay, Florida
Sapelo Island, Georgia
Waimanu Valley, Hawaii
Wells, Maine
Monie Bay (Chesapeake Bay), Maryland
Waquoit Bay, Massachusetts
Great Bay, New Hampshire
Hudson River, New York
North Carolina System, North Carolina
Old Woman Creek, Ohio
South Slough, Oregon
Jobos Bay, Puerto Rico
Narragansett Bay, Rhode Island
Padilla Bay, Washington

In addition to the eighteen designated reserves, the proposed Chesapeake Bay National Estuarine Research Reserve in Virginia is expected to be eligible for FY 91 funds.

These reserves are depicted in Figure 1; on-site reserve contacts and addresses are provided in appendix I.

## III. Availability of Funds

Funds are available on a competitive basis to any state or university, or qualified public or private individual to conduct research within national estuarine research reserves.

During Fiscal Year 1990, approximately $700,000 in research funds were available. Level funding for FY 91 research projects is expected. The approximate range of funding per successful project has been between $10,000 and $50,000. For Fiscal Year 1991, a maximum cap of $50,000 has been established. Proposals submitted may not exceed this amount without prior consultation with the Chief or the Research Coordinator of the Marine and Estuarine Management Division. Those proposals exceeding this established maximum without prior consultation will be returned to the proposer. Federal funds requested must be matched on an equal basis by cash or the value of goods and services directly benefiting the project in accordance with 15 CFR part 24, "Grants and Cooperative Agreements with State and Local Governments" (see also OMB Circulars A-102, "Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments"), A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally Recognized Indian Tribal Governments", and A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." It is anticipated that projects receiving funding under this announcement will begin in the spring of 1991. Research funds are normally awarded through a research cooperative agreement. Applicants not familiar with the requirements of a cooperative agreement or who need additional information on application requirements are encouraged to contact the applicable reserve manager or MEMD.

Recipients/applicants who have an outstanding accounts receivable with the U.S. Department of Commerce will not receive an award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

## IV. Purpose and Priorities

Research funds are primarily used to support management-related research that will enhance scientific understanding of reserve environments, provide information needed by reserve managers and coastal zone decisionmakers, and improve public awareness of estuaries and estuarine management issues. Research projects may be oriented to specific reserves; however, projects that will benefit more than one reserve in the national system will be given a higher emphasis than reserve-specific projects.

Research proposals submitted in response to this announcement must address coastal management issues identified as having regional or national significance, relate them to the National Research Priorities described in this announcement, and indicate the appropriate reserve(s). Research projects are normally funded for a year in duration. Proposals for up to three years may be considered if the applicant wishes to submit additional proposals for each succeeding year and has clearly demonstrated the benefits of the research to the reserve and the NERRS. Continuation of multi-year funding is at the discretion of NOAA and will be contingent on such factors as performance and the availability of funds. Although priority funding consideration will be given to proposals that address the broad categories listed below, all topics will not be relevant to all reserves in the NERRS. The research topic and the reserve must be carefully chosen to ensure that the resource management issues of primary concern to the reserve and the NERRS are addressed. It is thus very important that all prospective proposers contact the appropriate reserve before submitting a proposal responding to this announcement.

### *A. National Research Priorities*

Although large data sets exist for many of the fundamental processes of estuaries, there are significant gaps in the information needed to understand the complex functions of most estuaries. To address this issue, some of the Nation's most capable estuarine researchers gathered in 1984 for the first in a series of national estuarine symposia. Based on the most current developments in scientific protocol, the researchers recommended research directions to enhance our understanding of estuarine processes and functions. This assessment of problematic needs resulted in five categories of research directions: Water management, sediment management, nutrients and other chemical inputs, coupling of primary and secondary productivity, and fishery habitat requirements. These research topics have been identified as being a priority to all coastal areas of the United States, including Alaska, Hawaii, the Great Lakes States, Puerto Rico, Guam, and American Samoa.

#### 1. Water Management

Armstrong (1984) defines water management as using "whatever means possible to provide water for beneficial uses." The uses and users of water are many and varied, leading to one of the most important problems currently facing the Nation: allocation of freshwater resources. The increase in the consumptive use of water by municipal, commercial, industrial, agricultural, and recreational activities competes strongly with the availability of water to bays and estuaries. Changing land use practices near estuaries and their upstream tributaries affect the quantity, quality, and timing of freshwater inflow. Since estuaries, by definition, involve the inflow and mixing of fresh and salt water, these variances may cause significant changes to estuarine productivity. Thus, the relationship between freshwater inflow and estuarine productivity poses a prime research question (Copeland, 1984). However, determining these inflows also depends on our ability to understand how they govern the salinity regime, provide nutrients, couple primary and secondary productivity, and sustain habitats (Armstrong, 1984). Thus, to answer questions regarding water management, i.e., the allocation of freshwater to estuaries, the following topics are considered to be priority research issues:

(a) Determining the basis to establish the amounts of inflows needed to estuaries and the reliability of freshwater inflow estimates;

(b) Establishing the functional relationship between nutrient inflows to the estuary with freshwater inflows and primary and/or secondary productivity;

(c) Determining the quantitative relationship between freshwater inflow and fisheries production in specific estuaries and regional groups of estuaries;

(d) Delineating the factors that control the response and recovery of estuarine biological systems to large changes in water input;

(e) Establishing the role of coastal upwelling in determining estuarine productivity; and

(f) Preparing nutrient budgets on estuarine systems to clearly elucidate the roles of freshwater inflows, marshes, benthic systems, coastal waters, precipitation, and other sources, and to delineate the importance of each source in providing nutrients and recycling them.

#### 2. Sediment Management

Schubel (1984) states, "Sediment, particularly fine-grained sediment, has had and continues to have, significant impacts on estuarine productivity." Estuarine productivity is basically

affected by the amount and quality of the sediments entering the estuary (Copeland, 1984). However, these processes are immensely affected by human activities in the watersheds of estuaries. In addition, long time periods (up to decades and centuries) are required for the movement of sediments into estuaries from drainage basins of major rivers. Though the sediments may originate from external, internal, or marginal sources, external sediments along rivers are most influenced by human activities. However, the effective management of estuarine sediment problems are limited to two ends of the sedimentation process—at the source and at the sink (Schubel, 1984). Thus, the effective management of sediments may depend upon: (1) Reducing sediment inputs through drainage basins through proper soil conservation practices; (2) reducing contaminant input through proper source control; and (3) developing and implementing management strategies for sediment deposited in the estuary. On the other hand, estuary size as well as estuarine processes are varied. Fine sediments may not always be the most pressing problem in smaller estuaries, such as those found along the West Coast. Sand deposits along coastal sand bars and accumulation of materials from the watershed significantly affect many of these smaller systems (Zedler and Magdych, 1984). In addition, sediment input may not necessarily be harmful to any given estuary as sediment delivery plays an important role in the biological productivity of estuaries (Peterson, 1984).

The major impediment to research in this area is the impractical and infeasible nature of critical experiments on the relationship between ecosystems and major changes in their environment. For instance, it is impractical and infeasible to manipulate tidal flushing, flooding, and large-scale additions or removal of substrates and maintain a control system for comparison. Thus, most of the work conducted to date has been "before-and-after" studies of major events (Copeland, 1984).

It is therefore apparent that rational biological criteria must be used to assess the relative merits of alternative sediment management schemes. However, information gaps must be filled before the criteria can be developed. Priority research topics include:

(a) Detailed studies of sediment dynamics to include the effects of sedimentation on flushing and sedimentation rates, accumulation rates and changes in sediment composition between points of entry and accumulation, the joint impacts of reduced freshwater inflow and sediment delivery, the impacts of sediment delivery rates, and shallow water sedimentation processes;

(b) The testing and development of biological models that predict the impacts of sedimentation;

(c) Characterization of the processes that control absorption and desorption of contaminants and other dissolved substances;

(d) Assessing the impacts of sedimentation on benthic and mobile fauna;

(e) Determining the relationship of sediment to habitat types;

(f) Identifying the optimal balance between the long-term negative impacts of estuarine filling and the short-term positive stimulation of estuarine productivity; and

(g) Examining the resilience and recovery rates of ecosystems after large-scale sedimentation events.

3. Nutrients and Other Chemical Inputs

With most of the human population of the United States living around estuaries and other coastal areas, estuaries are experiencing increasing nutrient problems. It has been projected that by 1990, 75 percent of the United States' population will live within 50 miles of our Nation's coasts, including those of the Great Lakes (Nixon, 1984). There has also been an exponential increase in the use of inorganic fertilizers during the last 100 years, contributing to increased nutrient loads. Coupling this with the conversion of wetlands to urban and agricultural use overloads the estuary's ability to act as a nutrient sink and increases nutrient levels. As a result, scientists have assumed that the amounts of organic and inorganic nitrogen and phosphorus carried by streams and rivers into estuaries have also increased markedly. However, as Nixon (1984) points out, the "* * * lack of adequate long-term data makes it difficult to know if this is true or to make a quantitative assessment of the increase loading over time * * *." It is also noted that nutrients will continue to be a major human-related input to estuaries and coastal waters.

Little is known about how marine ecosystems respond to nutrient additions because most knowledge of the effects of nutrient additions to the marine ecosystem is based on laboratory studies of algal cultures or on short-term experiments involving nutrient additions to plankton communities (Copeland, 1984). However, another concern relates to the effects of chemical inputs into estuaries and coastal areas. Estimates suggest that 70,000 synthetic chemicals are currently in commercial use, with 1000 new ones synthesized annually (Malins, et al., 1984). Eventually, many of these chemicals enter estuaries and other environments, thereby altering those ecosystems. However, the effects of these inputs on the estuarine environment, from the benthic environment to fish and water quality, are not well understood, although evidence indicates that urban-associated estuaries may contain thousands of anthropogenic chemicals that may cause serious, pollutant-related pathological conditions (Malins, et al., 1984). Also, there is little known about the interactions of fertilizers and pesticides in agriculture.

The estuarine-like areas of the Great Lakes are also an important link to the fisheries, as they serve as nursery areas for numerous commercially important species and their prey. They also serve as a trap for many pollutants that could adversely impact the Lakes' ecosystems. All five of the Great Lakes are among the fifteen largest lakes in the world and possess approximately 95 percent of the surface freshwater in the United States, making the allocation of freshwater and the enhancement of water quality issues of special importance to this area of the United States.

In other words, environmental managers presently base their management strategies mostly on provisional data. It is thus important to develop "* * * focused and integrated multidisciplinary research programs * * *" (Nixon, 1984). In addressing management issues related to nutrients and chemical inputs, priority research may focus on:

(a) Testing the responses of estuarine ecosystems to combinations of nutrient inputs and recycling by developing ecosystem-level experiments involving microcosms, mesocosms, and field manipulations;

(b) Examining the fate of synthetic chemicals in estuaries through the chemical analysis of sediments; the performance of tissue-chemical, gross pathological and histological analyses; evaluation of community structures; conducting controlled laboratory and *in situ* field studies to identify chemicals responsible for field-observed and other toxic effects and determine their relationships; and developing research protocols to understand the long-term effects of exotic materials on estuarine ecosystems.

4. Coupling of Primary and Secondary Productivity

Estuarine ecosystems are characterized by high levels of primary and secondary production (Teal, 1962; Marinucci, 1982; Odum, 1984), although their theoretical relationship to each other is generally unknown. While there is a theoretical relationship between the two, the documentation and relative importance and ecological efficiencies of the pathways remains unresolved (Odum, 1984). Thus, broadly defined, this coupling includes nearly all food web interactions (Peters and Lewis, 1984).

Food chains in estuarine ecosystems are quantitatively and qualitatively connected. However, a clear understanding of the relationship between the quantity of biomass at one producer level and the quantity and quality of biomass at the next level is lacking. The concept of trophic structures in estuarine ecosystems is more of a food web than a food chain. In addition, the food web trophic structure found in estuaries is generally abbreviated compared to the longer food chains of the ocean and open waters of the Great Lakes. Understanding the fundamental aspects of this issue is difficult because of the likelihood that a change in one trophic level impacts other portions of the ecosystem by altering the directions or size of energy flow from one component to another.

The lack of documentation on the importance and ecological efficiencies of individual pathways leads to a fundamental management question revolving around the protection or improvement of secondary production by managing primary production (Copeland, 1984). With this concept in mind, many of the most important questions relating to estuarine productivity may revolve around the comparative importance of vascular plant detritus and algae to estuarine trophic structures (Odum, 1984). Related topics are the degree to which coastal fisheries organisms utilize detritus as an energy source and the impact of removing large tracts of detritus-producing areas such as swamps, marshes, and seagrass beds.

Thus, the most important research need in this area is the development of a quantitative relationship between primary and secondary production in estuaries. This requires a multidisciplinary approach to delineate the various food chains and relationships that exist in estuarine ecosystems. Thus, to address the information needs of estuarine managers and scientists, priority research topics should examine:

(a) The comparative trophic importance of vascular plant versus plankton organic matter;

(b) The degree to which coastal fishery organisms utilize detritus as an energy source; and

(c) The impact of removing large tracts of detritus-producing salt marshes and seagrass beds.

These may be accomplished through:

(1) The use of multiple isotopes and other techniques to indirectly identify sources of organic carbon for primary consumers in estuaries;

(2) Studies to determine the chemical composition and nutritional status of detritus complexes of different age and particle size;

(3) Laboratory feeding experiments to detail the utilization of vascular plant detritus by consumers;

(4) Growth and ecological efficiency studies in large tanks or small ponds to investigate consumer diets;

(5) Controlled field experiments in ponds to determine the feasibility of detritus aquaculture;

(6) Well-planned "before and after" investigations on the local impact of marsh, mangrove, or seagrass removal on fisheries; and

(7) Field investigations and laboratory experiments to investigate the potential and realized importance of hypothetical reduced-sulfur food webs.

5. Estuarine Fishery Habitat Requirements

Many studies have documented the value of estuaries as nursery areas for many commercially and recreationally important fish and shellfish species (for example: McHugh, 1967; Tyler, 1971; Bayly, 1975; Pollard, 1981; Deegan and Day, 1984). However, some estuaries support larger fish populations than others. Three major reasons often proposed for estuarine habitat utilization by fish are: (1) Food availability; (2) protection from predators; and (3) a benign abiotic environment (Joseph, 1973). But understanding the role of estuarine habitat and quantitative differences in fisheries production is difficult. Current evidence points to the importance of shallow inshore estuarine areas to fisheries production (Deegan and Day, 1984). In addition, marshes, seagrass beds, and nearshore shallow areas are particularly important fish habitat areas. Yet, major questions related to the specifics of the relationships between habitat and fish production are largely unanswered.

In order to formulate effective management programs, the most important questions revolve around the relationship between estuarine fish production and the quantity and quality of nursery areas in terms of food availability and subsequent growth mortality. A clear understanding of this would be useful for evaluation, design, and mitigation of activities affecting estuaries. To answer the question of why some estuaries are more productive than others, estuarine scientists need to address questions regarding habitat selection, species migration, species residence time, food quality and quantity, and the effects of environmental variations on survival, growth, and fish and shellfish movement. Some specific research topics that need to be addressed include:

(a) Delineation of the characteristics of a good nursery;

(b) Fishery yield per acre of salt marsh and species specific relationships;

(c) Relationships and mechanisms between fish catch and river discharge, wetland/water ratios, and primary production;

(d) The roles of various sources of primary production and the variance of these sources between estuaries;

(e) The effects of differing primary production sources on fish production;

(f) The relative contribution of different habitat to total stock;

(g) Flow requirements for critical life stages;

(h) Hydrodynamic influences on distribution, abundance, and survival of fishery species;

(i) Contaminant impacts on estuarine fields; and

(j) Food as a limiting factor to estuarine fish populations.

*B. Guidelines for Proposal Preparation*

Applicants for MEMD research funds must follow the guidelines presented herein when preparing proposals for research in national estuarine research reserves. Business managers and grants administrators should also refer to 15 CFR part 24, "Grants and Cooperative Agreements with State and Local Governments" (see also OMB Circulars A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments"), A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally Recognized Indian Tribal Governments", and A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit

Organizations." Proposals not following these guidelines will be returned to the proposer. All proposers must submit an original and two (2) copies of their proposals to MEMD. Recipients/applicants who have an outstanding accounts receivable with the U.S. Department of Commerce will not receive an award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

Applicants are reminded that a false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment.

*1. Proposal Content*

a. *Cover Sheet.* The applicant must submit a Standard Form 424 (Application for Federal Assistance) as a cover sheet to the proposal. This form is available upon request from the Marine and Estuarine Management Division, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235.

Specification of a proposed starting date does not ensure receiving an award by that date. Therefore, work on a project should not begin before the effective date on the official notification of the award from MEMD.

A proposal must be signed and dated by the organizational official authorized to contractually obligate the submitting organization. The principal investigator is also signatory.

b. *Table of Contents, Lists of Figures and Tables.* These should list the major contents of the proposal and the appropriate page numbers.

c. *Project Summary.* A 2–3 page project summary must be included. The summary should state the research objectives, scientific methods to be used, the significance of the project to a particular reserve and to the National Estuarine Reserve Research System and the national research priorities, and the amount of funds requested. The summary should include enough information to facilitate an initial review and screening of the project by NOAA. The summary should also be suitable for use in the public press.

d. *Project Description.* The main body of the proposal should be concise, detailed, and include the following components:

(1) *Introduction.* This section should introduce the reviewer to the national estuarine research reserve environment, the research setting, the relevant coastal management issue(s), the relevant national research priority, the research problem, and the need for the work. This section should include a brief historical narrative leading up to the proposed research, and describe the research problem in the context of significant previous work in the area and in relation to management issues discussed in the reserve management plan or in the research solicitation. This section must include a brief description of current literature and cite appropriate published and unpublished documents.

(2) *Hypotheses.* Based on review and analysis of existing literature and consultations with reserve personnel and scientists knowledgeable of the subject research, hypotheses should be stated which can be tested experimentally or through observational research in the reserve.

(3) *Objectives.* This section should discuss the overall study objectives, the specific research objectives, and the relationship of research project objectives to site-specific and national estuarine research reserve program objectives.

(4) *Methods.* This section should state the method(s) to be used to test the hypotheses and accomplish the specific research objectives including a systematic discussion of what, when, where, and how the data are to be collected, analyzed, and reported. Field and laboratory methods should be statistically valid and repeatable. Methods should be well documented and described in sufficient detail to enable other scientists to evaluate their appropriateness and their possible impact on the environment. Methods chosen should be justified and compared with other methods employed for similar work.

Methods should allow the testing of the hypotheses, but also provide baseline data that may be used in answering related ecological and management questions concerning the sanctuary environment. Measurements should be simple and reliable enough to allow comparison with those made at different sites and times by different investigators. If the project is to be long-term (e.g., a monitoring program), the methods selected must be stable enough that it is unlikely they will change drastically over the next 5–10 years. The methods must have proven their utility and sensitivity as indicators for natural or human-induced change. Newly devised or unproven methods should be field-tested to evaluate their soundness and likely success before applying for MEMD research funds.

Analytical methods and statistical tests applied to the data should be documented, thus providing a rationale for choosing one set of methods over other alternatives. Quality control measures also should be documented (e.g., statistical confidence levels, standards of reference, performance requirements, internal evaluation criteria). Indicate by way of discussion how data are to be synthesized, interpreted and integrated into final work products, and how and where the data are to be catalogued and stored for ready retrieval at later dates.

A map clearly showing the study location and any other features of interest must be included. Use a U.S. Geological Survey topographic map, or an equivalent, in constructing the location map for the proposal. Consultation with reserve personnel to identify existing maps is strongly recommended.

(5) *Project Significance.* In this section, discuss how the proposed research effort will enhance or contribute to improving the state of knowledge of the estuary and assist reserve management decisionmaking, i.e., why is the proposed research important and how can the results be used to manage estuarine resources? This section must also discuss, in detail, the relation of the proposed research to the research priorities stated in the research announcement. In addition, the applicant must also provide a clear discussion of how the proposed research addresses state and national estuarine and coastal resource management issues. If research findings may be applicable to other sites in the National Estuarine Reserve Research System, this should be given special mention. If the research is to be conducted at more than one reserve, the applicant must provide copies of correspondence with the appropriate reserve managers indicating consultation with the managers and their support for the proposed project.

(6) *Milestone Schedule.* A milestone schedule is required in the proposal. This schedule should show, in table form opposite the tasks required to accomplish project objectives, anticipated dates for completing field work and data collection, data analysis, progress reports, the draft report, the final report, and other related activities.

(7) *Personnel and Project Management.* Give a complete description of how the project will be managed, including the name and expertise of the principal investigator and the name(s), expertise, and task assignments of team members. Evidence of ability to perform should be supported by reference to similar efforts performed. Resumes listing qualifications related to professional and technical personnel should be provided. In an appendix, list each investigator's publications during the past five (5) years. The proposal should discuss and explain any portion of work

expected to be subcontracted and identify probable sources.

(8) *References.* Provide complete references for current literature, research, and other appropriate published and unpublished documents cited in the text of the proposal.

(9) *Budget.* The applicant may request funds under any of the categories listed below as long as the costs are reasonable and necessary to perform research and are determined to be in accordance with the previously mentioned 15 CFR part 24 and OMB Circulars A-102, A- 87, and A-110. The amount of Federal funds requested must be matched on at least an equal basis by cash or the value of goods and services, except land, directly benefitting the research project. General guidelines for the non-Federal share are contained in 15 CFR part 24 and OMB Circular A-102.

The budget should contain itemized costs with appropriate narratives justifying proposed expenditures. Budget categories may be broken down as follows, clearly showing both Federal and non-Federal shares:

*Salaries and Wages.* Salaries and wages of the principal investigator and other members of the project team constitute direct costs in proportion to the effort devoted to the project. The number of full-time person months or days and the rate of pay (hourly, monthly, or annually) should be indicated. Salaries requested must be consistent with the institution's regular practices. The submitting organization may request that salary data remain confidential information.

*Fringe Benefits.* Fringe benefits (i.e., social security, insurance, retirement) may be treated as direct costs as long as this is consistent with the institution's regular practices.

*Equipment.* While not the primary purpose of these funds, research funds may be approved for the purchase of major equipment only if the following conditions are met:

(a) A lease vs. purchase analysis has been conducted and the findings determine that purchase is the most economical method of procurement;

(b) There is a demonstrated need for the equipment to support reserve-sponsored research after the termination of the research award under which the equipment was purchased; and there are adequate facilities and provisions for housing, storing, protecting, and maintaining the equipment on location at the reserve after the termination of the research award.

Discuss each of these points along with the purpose of the equipment and a justification for its use. Provide a list of equipment to be purchased, leased, or rented by model number and manufacturer, where known. Equipment acquired costing $300 or more with a life expectancy of 2 years or more becomes the property of the Marine and Estuarine Management Division at the termination of the contract.

*Travel.* Travel costs are reimbursable only to the extent provided by Government Travel Regulations. The type, extent, and estimated cost of travel should be explained and justified in relation to the proposed research. Travel expense is limited to round trip travel to field research locations and should not exceed 40 percent of total direct costs. Funds may be requested for transportation and subsistence, and for consultant's travel. Travel to conferences will not be approved unless a clear justification is provided and are allowed by Government Travel Regulations.

*Other Direct Costs.* Other anticipated costs should be itemized under the following categories:

(a) *Materials and Supplies.* The budget should indicate in general terms the types of expendable materials and supplies required and their estimated costs;

(b) *Research Vessel or Aircraft Rental.* Include purpose, unit cost, duration of use, and justification;

(c) *Laboratory Space Rental.* Funds may be requested for use of laboratory space at research establishments away from the granted institution while conducting studies specifically related to the proposed effort;

(d) *Telecommunication Services and Reproduction Costs.* Include expenses associated with telephone calls, telex, xeroxing, reprint charges, film duplication, etc.;

(f) *Consultant Services and Subcontracts.* Consultant services should be disclosed and justified in the proposal. Furnish information on consultant's expertise, primary organizational affiliation, daily compensation rate, and number of days of service. Travel should be listed under the travel budget;

(g) *Computer Services.* The cost of computer services may be requested and must be justified, including data analyses and storage, word processing for report preparation and computer-based retrieval of scientific and technical information.

*Indirect Costs.* Include fees and overhead costs based on the approved Federal formula.

**Note:** It is the policy of the Department of Commerce that indirect costs shall not exceed direct costs.

(10) *Requests for Reserve Support Services.* On-site reserve personnel sometimes can provide limited logistical support for research projects in the form of manpower, equipment, supplies, etc. Any request for reserve support services should be approved by the reserve manager prior to proposal submission and included as part of the proposal package in the form of written correspondence.

(11) *Coordination With Other Research in Progress or Proposed.* MEMD encourages collaboration and cost-sharing with other investigators to enhance scientific capabilities and avoid unnecessary duplication of effort. Proposals should include a description of how the proposed effort will be coordinated with other research projects that are in progress or proposed, if applicable.

(12) *Other Sources of Financial Support.* List all current or pending research to which the principal investigator or other key personnel have committed their time during the period of the proposed work, regardless of the source of support. Indicate the level of effort or percentage of time devoted to these projects.

In addition to the required non-federal match, MEMD encourages investigators to seek other sources of financial support to supplement Federal funds. If the proposal submitted to MEMD is being submitted to other possible sponsors, list them and describe the extent of support being sought. Disclosure of this information will not jeopardize chances for Federal funding.

(13) *Permits.* The applicant must apply for any applicable state or Federal permits. Attach a copy of the permit application and supporting documentation to the proposal as an appendix. MEMD must receive notification of the approval of the permit application before funding can be approved.

*2. Submission of Proposals*

Proposals for research in the National Estuarine Reserve Research System are solicited annually for award the following fiscal year. Proposal due dates and other pertinent information are contained in the announcement of research opportunities. A list of the appropriate reserve and MEMD contact persons is attached to the research announcement. All proposals sent to MEMD must cite and reference the **Federal Register** notice in which the announcement appeared. Proposers must submit an original and two (2) copies of each proposal they submit.

*3. Proposal Review and Evaluation*

Proposals received by MEMD are acknowledged, forwarded to the appropriate reserve manager, and sent out for national peer review. All proposals are thoroughly reviewed by the appropriate MEMD project manager, research coordinator, Deputy Chief, Chief, reserve managers and their research advisory committees, and by 3–10 other individuals who are acknowledged experts in the particular field represented by the proposal. Proposers are invited to suggest the names of individuals who, in their opinion, are especially well qualified to evaluate the proposal objectively. When a cooperative agreement is awarded, verbatim copies of the reviews, excluding the names of reviewers, are mailed, upon request, to the Principal Investigator/Project Director.

In order to provide for the fair and equitable selection of the most meritorious research projects for support, MEMD has established criteria for their review and evaluation. These criteria are intended to be applied to all research proposals in a balanced and judicious manner, in accordance with the objectives and content of each proposal. The criteria used in the peer review process to aid MEMD in its final selection of research projects are listed below, together with the elements that constitute each criterion and the relative weight (in parenthesis):

a. *Scientific Merit* (3.0). This is used to determine whether the objectives of the proposal or of the observations are important to the field and to assess the likelihood that research will improve the scientific understanding of estuarine processes within the reserve as well as in other similar estuaries.

b. *Importance to Reserve Management and to Regional Coastal Management Issues* (2.0). This is used to determine its importance to management of the reserve (does its address management issues relevant to the site and the region?) and its suitability for addressing coastal management issues of regional and/or national importance.

c. *Relevance to National Research Priorities* (2.0). This criterion is used to assess the relationship between the objectives of the proposed project and the National Research Priorities established by NOAA.

d. *Technical Approach* (3.0). This is used to assess the technical feasibility of the proposed effort, the reasonableness of the hypotheses, the degree to which the proposed timeline is realistic, the appropriateness and scientific validity of the proposed analytical methods, the degree to which the proposal demonstrates an understanding of the reserve environment and management needs, the current state of knowledge in the particular field of research interest, and the total research requirements.

e. *Qualifications of P.I. and Key Personnel* (2.0). This criterion relates to the experience and past performance of the principal investigator and key personnel, their familiarity with the geographic area of the proposed study, and their publication record.

f. *Institutional Support and Capabilities* (1.0). This relates to the extent of institutional support for and commitment to the proposed research and what facilities, equipment, and other resources are available to the principal investigator and key personnel for use in accomplishing the proposed work. Because of the 50% matching requirement, this is an especially important consideration.

g. *Budget* (1.0). This criterion is used to determine whether the budget is realistic and reasonable for accomplishing the proposed tasks.

*4. Reporting Requirements*

Awards for research are usually made during the second quarter of the fiscal year. Quarterly performance reports, a draft technical report, and a final technical report are required as conditions of the award.

Performance reports are summaries of all work performed during the preceding quarter and show the overall progress against the milestone schedule in the approved proposal. A statement of the milestones reached, data compiled, and analyses completed must be included. In addition, a summary of any significant technical, manpower, schedule, or cost problems encountered during the preceding quarter, an assessment of their probable impact on the project's approved milestone schedule, and a statement of any corrective action taken or proposed is also required. Also required is a summary of major work activities scheduled for the next quarter and any questions or problems regarding the applicant's work that requires discussion with or resolution by MEMD.

The draft and final technical reports are required to be prepared following MEMD's "Guidelines for Preparing Technical Reports on Research in National Estuarine Research Reserves" which is appended to the award, but is also available upon request.

5. Further Information

The requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs", are applicable to the awards of grants and cooperative agreements under this notice. However, the requirements of the Executive Order apply to individuals only if a state or local government is the provider of the non-federal funds.

In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement.

Applicants are also subject to the requirements of 15 CFR part 28, "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-free Workplace (Grants)."

For further information on research opportunities under the National Estuarine Reserve Research System, contact the on-site personnel listed in this text or the Marine and Estuarine Management Division, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue, NW., Suite 714, Washington, DC 20235 (202) 673–5126.

*C. General Requirements*

Cooperative agreements for Federal financial assistance are subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards, such as compliance with the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and other laws and regulations prohibiting discrimination; patent and copyright requirements; cost sharing; the use of U.S. flag carriers for international travel; and the use of foreign currency as appropriate to accomplish the objectives of a project.

*D. Adherence to Original Objectives*

The Principal Investigator should feel free to pursue important leads that may arise during the conduct of the project. MEMD support will not be jeopardized if the Principal Investigator discontinues or materially modifies the originally planned line of inquiry in favor of one that appears to have more promise. MEMD must, however, give prior approval when a modification would result in a major deviation from the original objective(s) or project scope, including activities specifically excluded from support when the award was made.

*E. Adherence to Original Budget Estimates*

The cooperative agreement award includes or refers to a budget that lists the items for which funds are provided.

All budget transfers are subject to the provisions of 15 CFR part 24 and OMB Circular A-110 as appropriate. While the Principal Investigator has reasonable flexibility to alter direction of the project when changes seem advantageous, the recipient organization must consider the effect of any budget reallocations on the indirect cost portions of the budget, and must observe the conditions prescribed by the award. Any change in the budget that will affect the match portion of the award must be approved in writing by MEMD. When any budget change requires MEMD approval, two copies of the request, signed by the Principal Investigator and by the recipient organization's authorized official, should be sent to the assigned MEMD Contracting Officer's Technical Representative. The request should clearly state which budget items are to be changed and by what amounts and should explain the reasons for the change.

*F. Changes in Personnel*

Written MEMD approval is required for any permanent change in Principal Investigator(s) or project director(s) or for any temporary change in excess of three (3) months, such as an investigator taking sabbatical leave. Further, MEMD must be informed when it appears that a Principal Investigator will devote substantially more or less effort to the work than anticipated in the approved proposal. Written prior approval is also required for any change in senior personnel specifically named in the proposal and for the addition of senior personnel not named in the proposal.

*G. Transfer of Principal Investigator*

When a Principal Investigator plans to leave an institution during the course of an award, the institution has the prerogative to nominate a substitute PI or request that the award be terminated and closed out. Substitute PI's are subject to written MEMD approval. In those cases where a particular PI's participation is integral to a given project and the PI's original and new institution agree, MEMD will request a transfer of the cooperative agreement and the assignment of remaining unobligated funds to the PI's new institution.

*H. Subcontracts*

Subcontracts that become necessary after a cooperative agreement has been made must be submitted to MEMD for approval. The proposed performance statement and budget, a statement indicating the basis for selection of the contractor, and a justification of the proposed arrangement must be provided.

*I. Suspension or Termination of Cooperative Agreements*

MEMD cooperative agreements may be suspended or terminated in accordance with the procedures contained in the General Grant Conditions. Cooperative agreements may also be terminated by mutual agreement. Termination by mutual agreement shall not affect any commitment or cooperative agreement funds that, in the judgement of MEMD and the recipient, had become firm before the effective date of the termination.

*J. Proposals as Public Record*

A proposal that results in a MEMD cooperative agreement becomes part of the record of the transaction and will be available to the public, upon written request, except as described below. Information or material that MEMD and the applicant or recipient mutually agree to be of a privileged nature will be held in confidence to the extent permitted by the Freedom of Information Act (FOIA), 5 U.S.C. 552, and other relevant laws. Without assuming any liability for inadvertent disclosure, MEMD will seek to limit dissemination of such information to its personnel and, when necessary for evaluation of the proposal, to outside reviewers. Accordingly, any privileged information the applicant views as confidential should be in a separate section of the proposal and be labeled with an accompanying statement bearing a legend such as: "The following is confidential information that the proposing entity requests not to be released to persons outside the Government, except for purposes of evaluation." Appropriate labeling in the application aids identification of what may be specifically prohibited from disclosure by statute. In accordance with Department of Commerce Administrative Order 203-26 (May 15, 1985), if a decision has been made not to fund an application containing information marked "confidential," "proprietary," "trade secret," or the like, the proposal shall be returned promptly to the sender.

A proposal that does not contain confidential information and does not result in a MEMD cooperative agreement will be retained by MEMD but will be released to the public only with the consent of the proposer or to the extent required by FOIA and other relevant laws. Portions of proposals resulting in awards that contain descriptions of inventions in which either the Government or the recipient owns or may own a right, title, or interest (including a nonexclusive license) will not normally be made available to the public until after reasonable time has been allowed for filing patent application. It is the policy of MEMD to notify the recipient of receipt of requests for copies of funded proposals so that the recipient may advise MEMD of such inventions described in the proposal.

*K. Inventions and Copyrightable Materials*

Each MEMD cooperative agreement in support of research may be subject to a patent rights clause. Normally, recipients may elect to retain principal rights to their employees' inventions, subject to certain conditions set forth in the Federal Acquisition Circular 84-27. Each MEMD cooperative agreement may be subject to several conditions affecting copyrightable material (reports, publications, software, etc.) produced in the performance of work under the cooperative agreement. Normally, recipients may own or permit others to own most rights to such material, with the Government receiving the right to use the material for Government purposes.

MEMD encourages dissemination especially through publication in refereed journals and similar media of research performed under its cooperative agreements. MEMD may arrange for the publication of outstanding MEMD-funded research projects in its NOAA Technical Memorandum Series and disseminate through the National Technical Information Service (NTIS) of the U.S. Department of Commerce.

*L. Classification*

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this notice is not a major action requiring a regulatory impact analysis under Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning

grants, benefits and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This notice contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648-0121.

(Federal Domestic Assistance Catalog Number 11.420, National Estuarine Reserve Research System)

Dated: June 1, 1990.

**John Carey,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

## Appendix I. NERRS On-Site Management Personnel

Alabama

Weeks Bay National Estuarine Research Reserve, Pamala James, Manager, 10936-B U.S. Highway 98, Fairhope, AL 36532, (205) 928-9792

California

Elkhorn Slough National Estuarine Research Reserve, Steve Kimple, Manager, 1454 Elkhorn Road, Watsonville, CA 95076, (408) 728-0564

Mark Silberstein, Elkhorn Slough Foundation, P.O. Box 267, Moss Landing, CA 95039, (408) 728-5939

Tijuana River National Estuarine Research Reserve, Paul Jorgenson, Manager, 3990 Old Town Avenue, Suite 300 C, San Diego, CA 92110, (619) 575-3613

Florida

Apalachicola River National Estuarine Research Reserve, Woodard Miley II, Manager, 261 7th Street, Apalachicola, FL 32320, (904) 653-8063

Rookery Bay National Estuarine Research Reserve, Kris Thoemke, Manager, 10 Shell Island Road, Naples, FL 33942, (813) 775-8845

Georgia

Sapelo Island National Estuarine Research Reserve, Noel Holcomb, Reserve Coordinator, Dept. of Natural Resources, P.O. Box 19, Sapelo Island, GA 31327, (912) 458-2251

Hawaii

Waimanu Valley National Estuarine Research Reserve, Robert Lee, Manager, Dept. of Land and Natural Resources, P.O. Box 621, Honolulu, Hawaii 96809, (808) 548-7417

Maine

Wells National Estuarine Research Reserve, James List, P.O. Box 1559, Wells, ME 04090, (207) 646-4521

Maryland

Chesapeake Bay National Estuarine Research Reserve, Beth Ebersole, Acting Manager, Dept. of Natural Resources, Tawes State Office Building, 580 Taylor Avenue, Annapolis, MD 21401, (301) 974-2784

Massachusetts

Waquoit Bay National Estuarine Research Reserve, Christine Gault, Manager, Dept. of Environmental Management, P.O. Box 92W, Waquoit, MA 02536, (508) 457-0495

New Hampshire

Great Bay National Estuarine Research Reserve, John Nelson, Manager, New Hampshire Fish and Game Department, 37 Concord Road, Durham, NH 03824, (603) 868-1095

New York

Hudson River National Estuarine Research Reserve, Elizabeth Blair, Manager, c/o Bard College Field Station, Annandale-on-Hudson, NY 12504, (914) 758-5193

North Carolina

North Carolina System National Estuarine Research Reserve, John Taggart, Manager, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611, (919) 733-2293

Ohio

Old Woman Creek National Estuarine Research Reserve, Eugene Wright, Manager, David Klarer, Research Coordinator, 2514 Cleveland Road, East, Huron, OH 44839

Oregon

South Slough National Estuarine Research Reserve, Michael Graybill, Manager, P.O. Box 5417, Charleston, OR 97420, (503) 888-5558

Puerto Rico

Anaisa Delgado, Manager, Jobos Bay National Estuarine Research Reserve, Dept. of Natural Resources, P.O. Box 1170, Guayama, PR 00655-0327, (809) 864-0105

Rhode Island

Narragansett Bay National Estuarine Research Reserve, Al Beck, Manager, Dept. of Environmental Management, 9 Hayes Street, Providence, RI 02908, (401) 728-4236

Virginia—1990 Designation Expected

Chesapeake Bay National Estuarine Research Reserve in Virginia, Carroll Curtis, Manager, Virginia Institute of Marine Science, Gloucester Point, VA 23062, (804) 642-7156

Washington

Padilla Bay National Estuarine Research Reserve, Terry Stevens, Manager, 1043 Bayview-Edison Road, Mt. Vernon, WA 98273, (206) 428-1558

[FR Doc. 90-13267 Filed 6-7-90; 8:45 am]

BILLING CODE 3510-08-M

# COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

## Procurement List 1990; Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to procurement list.

**SUMMARY:** This action adds to Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** July 9, 1990.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 5557-1145.

**SUPPLEMENTARY INFORMATION:** On April 20, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 14996 and 14997) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540). After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1990:

### Commodities

Strap, Webbing
2540-00-715-3854
2540-00-894-9542

Strap, Webbing
5340-01-105-1002
5340-01-110-4298

**Services**

*File Maintenance*

Department of Commerce, U.S. Patent and Trademark Office, Arlington, Virginia.

*Grounds Maintenance*

U.S. Army Reserve Center, 900 Cache Road, Lawton, Oklahoma.

*Janitorial/Custodial*

U.S. Army Reserve Center, 900 Cache Road, Lawton, Oklahoma.

*Janitorial/Grounds Maintenance*

U.S. Army Reserve Center, College and Reserve Avenue, Hot Springs, Arkansas.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 90-13343 Filed 6-7-90; 8:45 am]

BILLING CODE 6820-23-M

## Procurement List 1990; Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** July 9, 1990.

**ADDRESSES:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557-1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

**Commodities**

Deodorant, General Purpose
6840-00-664-6610

Table, Folding Legs, Field
7105-00-269-9275

**Services**

*Commissary Shelf Stocking & Custodial*

Presidio of San Francisco Commissary, San Francisco, California.

*Food Service Attendant*

Naval Amphibious Base, Little Creek, Virginia.

*Food Service Attendant*

Naval Hospital, Portsmouth, Virginia.

*Grounds Maintenance*

U.S. Army Reserve Center, 4300 S. Treadway, Abilene, Texas.

*Janitorial/Custodial*

Supervisor's Office Facilities, Idaho Panhandle National Forests, 1201 Ironwood Drive, Coeur d'Alene, Idaho.

*Janitorial/Custodial*

David Barrow U.S. Army Reserve Center, 1051 Russell Cave Pike, Lexington, Kentucky.

*Janitorial/Custodial*

Air Traffic Control Tower, Essex County Airport, Fairfield, New Jersey.

*Janitorial/Custodial*

Air Traffic Control Tower and NAVCOM Sector Field Office, Pasco, Washington.

*Janitorial/Grounds Maintenance*

Federal Building, 823 Marin Street, Vallejo, California.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 90-13344 Filed 6-7-90; 8:45 am]

BILLING CODE 6820-23-M

# DEPARTMENT OF DEFENSE

## Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**Title, Applicable Form, and Applicable OMB Control Number**

Terminal and Transfer Facilities Survey; WRSC Forms, 1, 2, 3, 4, 5, 6, 7, 8, and 9; OMB Control Number 0702-0012.

*Type of request:* Extension.

*Average burden hours/minutes per response:* 15 mins.

*Frequency of response:* Annually.

*Number of respondents:* 1,341.

*Annual burden hours:* 333.

*Annual responses:* 1,341.

*Needs and uses:* Data compiled into Port Series Reports used within the Corps of Engineers for navigation and planning functions; by Coast Guard for marine safety inspections, by Navy for guidance in providing safe passage and terminalling in time of National emergency; by Army for mission deployment planning, and public for general reference, planning, and various studies.

*Affected public:* Businesses or other for-profit.

*Frequency:* Annually.

*Respondent's obligation:* Voluntary.

*OMB desk officer:* Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection shoud be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: June 4, 1990.

**L.M. Bynum,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 90-13289 Filed 6-7-90; 8:45 am]

BILLING CODE 3810-01-M

## U.S. Court of Military Appeals Code Committee Meeting

**ACTION:** Notice of public hearing.

**SUMMARY:** This notice announces the forthcoming public meeting of the Code Committee established by Article 67(g), Uniform Code of Military Justice, 10 U.S.C. 867(g), to be held at 10 a.m. on June 18, 1990, in the Judge William Holmes Cook Conference Room at the

Courthouse of the United States Court of Military Appeals, 450 E Street, NW., Washington, DC 20442-0001. The agenda for this meeting will include consideration of the proposed changes to the Manual for Courts-Martial, United States, 1984, as well as other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Services.

**DATES:** June 18, 1990.

**FOR FURTHER INFORMATION CONTACT:** Thomas F. Granahan, Clerk of Court, United States Court of Military Appeals, 450 E Street, NW., Washington, DC 20442-0001; telephone (202) 272-1448.

Dated: June 4, 1990.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-13293 Filed 6-7-90; 8:45 am]

BILLING CODE 3810-01-M

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## Office of the Secretary

## Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Revised Procedures

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice of revised procedures.

**SUMMARY:** This notice provides information regarding a change in policy for calculating capital and direct medical education payments under the CHAMPUS diagnosis related group (DRG) payment system.

**EFFECTIVE DATE:** This revised policy is effective for any settlement of capital and direct medical education costs made on or after January 1, 1989.

**ADDRESSES:** Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

**FOR FURTHER INFORMATION CONTACT:** Stephen E. Isaacson, Office of Program Development, OCHAMPUS, telephone (303) 361-4005.

To obtain copies of this document, see the "**ADDRESSES**" section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS contractor.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The final rule published on September 1, 1987, (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system including the procedures for payment of capital and direct medical education costs. These items are reimbursed as annual lump-sum pass through payments.

In order to determine CHAMPUS' obligation for capital and direct medical education (hereinafter referred to as pass throughs), the CHAMPUS contractor first calculates the allowable amount based on the ratio of CHAMPUS inpatient days to total inpatient days applied to the pass through costs (as reported to Medicare). The capital portion of this amount is reduced according to the statutorily-required percentage (currently 15 percent), and the total allowable amount for the pass throughs is added to total allowable DRG-based amounts for the hospital during the reporting year. The contractor then determines how much the hospital has been reimbursed for its CHAMPUS patients from CHAMPUS, from beneficiary cost-shares, and from primary payers. The difference between the total allowable amount (DRG-based amounts plus pass through amounts) and the total actual reimbursement is the amount CHAMPUS pays the hospital. If there is no difference or if the hospital has been paid more than the total allowable amount, CHAMPUS makes no separate pass through payment to the hospital.

The procedures for calculating pass through payments require that the allowable amounts for the pass throughs be reduced to account for payments from other health insurance (OHI). This is based on the rationale that all OHI payments include some amount to compensate the hospital for capital and direct medical education expenses. In addition, CHAMPUS considers pass through payments to be an integral part of our DRG-based payments which are subject to double coverage provisions. Although pass through payments are made as lump-sum year-end payments, this was done only because no equitable way has been developed to include them in each claim payment. Our preference continues to be to include them with claim payments, and as soon as Medicare establishes such procedures, we expect to adopt them.

We did not include in the **Federal Register** information about the application of the double coverage provisions to the pass through payments, since we were merely implementing requirements which had been in existence for a long time and which were already set forth in our regulation.

These existing requirements are:

A. CHAMPUS is required to be secondary payer to all other coverages as required by Public Law 97-377;

B. General provisions of law prohibit payment when there is no legal obligation to pay; and

C. Hospitals are required to participate on all claims for inpatient services and to accept the CHAMPUS-determined allowable amount as payment in full under provisions of the Consolidated Omnibus Budget Reconciliation Act, 1986.

In general, our procedures for payment of the pass throughs have caused few problems or complaints. However, one aspect has recently become the focus of a number of complaints. This involves claims on which the primary payer has paid at least as much as the CHAMPUS' liability, and, as a result, CHAMPUS makes no payment.

Until now, if a claim is submitted to CHAMPUS, we consider that patient to be a CHAMPUS patient regardless of the actual payment made by CHAMPUS, and we count all days as CHAMPUS inpatient days. The only exception is days which are determined to be not medically necessary. Thus, if a claim is submitted to CHAMPUS but no payment is made because OHI has fully paid the DRG-based amount, we include that patient in the count of CHAMPUS inpatient days and include the OHI payment in the computation of pass through payments.

This was done because we believed that if a claim is submitted to CHAMPUS it is done so with the expectation of CHAMPUS payment. Furthermore, whether or not we actually made any payment, the claim must be processed by the contractor, and that patient and inpatient stay are included in all CHAMPUS data.

Hospitals have objected to this policy for several reasons. First, they contend that often claims are not submitted for payment (since the hospital knows beforehand that CHAMPUS will make no payment) but for information only. Second, this policy substantially reduces CHAMPUS' liability for the pass throughs by subsidizing CHAMPUS' liability with payments from other payers for "non-CHAMPUS" patients. Third, this policy does not conform to Medicare procedures, since if Medicare pays nothing for a given beneficiary, they do not include that beneficiary in their calculations.

## II. Revised Procedure

We have decided to revise this policy. In those cases where CHAMPUS has no liability because the primary payer has paid the full CHAMPUS allowable amount (DRG-based), we will no longer include the primary payments in calculating our year-end pass through payments. This applies only to claims for which CHAMPUS makes no payment. If CHAMPUS makes payment on a claim, regardless of the amount, the claim—both days and primary payments—will be included in our calculation of pass through payment.

To ensure that our procedures are clear, we are providing the following step-by-step explanation of how CHAMPUS pass through payments are calculated.

*Step 1:* Determine the ratio of CHAMPUS inpatient days to total inpatient days. In determining CHAMPUS inpatient days the following are not to be included:

(a) Any days determined to be not medically necessary, and

(b) Days included on claims for which CHAMPUS made no payment because a primary payer paid the full CHAMPUS-allowable amount.

*Step 2:* Multiply the ratio from Step 1 by the total allowable capital costs.

*Step 3:* Reduce the amount from Step 2 by the statutorily-required capital reduction percentage(s). This is the total allowable CHAMPUS capital payment for DRG discharges.

*Step 4:* Multiply the ratio from Step 1 by total allowable direct medical education costs. This is the total allowable CHAMPUS direct medical education payment for DRG discharges.

*Step 5:* Combine the amounts from Step 3 and Step 4.

*Step 6:* Determine total allowable CHAMPUS DRG-based payments (basic DRG, outlier, and indirect medical education) for all DRG discharges, assuming no double coverage for each case. Do not count claims on which CHAMPUS made no payment.

*Step 7:* Determine total allowable CHAMPUS payments for DRG discharges by adding total allowable capital payments (from Step 3), total allowable direct medical education payments (from Step 4), and total allowable DRG payments (from Step 6).

*Step 8:* Determine total actual payments made by CHAMPUS for those discharges in Step 6. This is to include government-paid amounts as well as beneficiary cost-share amounts.

*Step 9:* Determine the total actual payments made by primary payers for those discharges in Step 6. Do not include primary payer amounts paid on claims for which CHAMPUS made no payment.

*Step 10:* Determine total actual payments made to the hospital for DRG discharges by adding the payment from primary payers (from Step 9) and the payments from CHAMPUS (from Step 8).

*Step 11:* Subtract the total actual payments made to the hospital (from Step 10) from the total allowable CHAMPUS payments (from Step 7). The lesser of this amount or the amount from Step 5 is the CHAMPUS payment due the hospital for capital and direct medical education.

## III. Administrative Implementation

This change requires no regulation amendment in order to implement it. Nevertheless, because of the considerable public interest in this policy, we are publishing this notice in the **Federal Register** to ensure wide dissemination of the change we are making.

The decision to make this change was made in April. We immediately notified our contractors to suspend all actions with regard to pass through payments. This includes suspension of payments as well as suspension of a number of recoupment actions based on the previous calculations. Since that time we have prepared the instructions necessary for our contractors to implement this change. By the time this notice is published, the contractors should be nearly ready to resume processing of these payments. Any hospital which wishes to check on the status of its payment request which may be caught up in this change should contact the appropriate CHAMPUS contractor.

## IV. Retroactive Implementation

We believe this is a significant change in policy which can substantially increase CHAMPUS pass through payments for some hospitals. As a result, we have decided to make this change effective retroactively for settlements occurring on or after January 1, 1989. Any hospital which has received a settlement of pass through costs since that date and wishes to have their payment recalculated and adjusted, if necessary, must request their CHAMPUS claims processing contractor to do so. Such request must be in writing and must be received by the CHAMPUS contractor no more than ninety (90) calendar days after publication of this notice in the **Federal Register**.

Since it is the hospital's responsibility to initiate any adjustment to these payments, if a hospital is unsure if a request for payment has been settled, it should contact its CHAMPUS contractor for clarification.

Dated: June 4, 1990.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-13290 Filed 6-7-90; 8:45 am]

BILLING CODE 3810-01-M

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## Defense Science Board 1990 Summer Study on Tactical Forces/C³

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Science Board 1990 Summer Study on Tactical Forces/C³ will meet in closed session on 26 and 27 June at The Pentagon, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will identify areas of technological research and development which need special emphasis in the 1990's to ensure robust tactical forces and related C³ structure.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: June 4, 1990.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 90-13291 Filed 6-7-90; 8:45 am]

BILLING CODE 3810-01-M

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## Defense Science Board Task Force on Acquisition Streamlining; Meeting

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on Acquisition Streamlining will meet in closed session on 27 and 28 June, 1990, at Science Applications International Corporation (SAIC), 1710 Goodridge Drive, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the

perceived needs of the Department of Defense. This meeting will address initial operational capability timetables for defense systems and equipment currently in development.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: June 4, 1990.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc 90-13292 Filed 6-7-90; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Air Force

### Intent To Prepare Environmental Impact Statement Disposal/Reuse of Pease AFB, NH

The United States Air Force will prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of disposal and reuse of the property that is now Pease Air Force Base (AFB). On May 25, 1990 the Air Force filed an EIS with the EPA for use in decision making regarding closure of Pease AFB.

The disposal/reuse EIS will address disposal of the property to public or private entities and the potential impacts of reuse alternatives. All available property will be disposed of in accordance with provisions of Public Law 100-526, and applicable federal property disposal regulations.

The Air Force is planning to conduct a scoping meeting to determine the environmental issues and concerns to be analyzed, and to solicit proposed disposal/reuse alternatives that should be addressed in the EIS. In soliciting disposal/reuse inputs, the Air Force intends to consider all reasonable alternatives offered by any Federal, State, and local government agency and any Federally-sponsored or private entity or individual with an interest in acquiring available property at Pease AFB. These alternatives will be analyzed in the EIS and lead to disposal decisions to be documented in the Air Force's Final Disposal Plan for Pease AFB. The meeting for this action will take place on Friday, June 22, 1990—7-11 p.m. at the Portsmouth Municipal Complex, City Council Chambers, 1 Junkins Avenue, Portsmouth, New Hampshire 03801.

To ensure the Air Force will have sufficient time to consider public inputs on issues to be included in the disposal/reuse EIS and disposal alternatives to be included in the Final Disposal Plan, comments and reuse proposals should be forwarded to the addressee listed below by July 13, 1990. However, the Air Force will accept comments at the address below at any time during the environmental impact analysis process.

For further information concering the study of Pease AFB disposal/reuse and the EIS activities, contact. Lt. Col. Tom Bartol, AFRCE-BMS/DEP, Norton AFB, CA 92409-6448.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 90-13308 Filed 6-7-90; 8:45 am]

BILLING CODE 3910-01-M

## Defense Intelligence Agency

### Privacy Act of 1974, New System of Records

**AGENCY:** Defense Intelligence Agency, DoD.

**ACTION:** Proposed addition of three new record system notices for public comment. The proposed new record system notices are provided below in their entirety.

**SUMMARY:** The Defense Intelligence Agency proposes to add three new record systems to its existing inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

**DATES:** The proposed actions will be effective without further notice on July 9, 1990, unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to Mrs. Helen L. West, FOIA/PA Office, ATTN: RTS-1, Defense Intelligence Agency, Washington, DC 20340-3299. Telephone (202) 373-4291 or Autovon 243-4291.

**SUPPLEMENTARY INFORMATION:** The Defense Intelligence Agency record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a), have been published in the Federal Register as follows:

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow)
51 FR 30527, Aug 27, 1986

Three new systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on May 25, 1990, to the Committee on Governmental Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Dated: June 4, 1990.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**LDIA 0008**

**SYSTEM NAME:**

Vehicle Registration Information Files.

**SYSTEM LOCATION:**

Defense Intelligence Agency, Washington, DC 20340-3299.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

DIA employees and civilian contractors who register vehicles in order to gain entrance to DoD installations and those who may apply for a parking permit.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name, Social Security Number, home address, office symbol, work telephone number, vehicle identification, and related information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Federal Property and Administrative Services Act of 1949; 10 U.S.C. 8012; 44 U.S.C. 3101; and Executive Order 9397.

**PURPOSE(S):**

To provide a record for control of privately-owned vehicles which are authorized to operate on DoD installations; to assign parking permits to eligible military and civilian personnel and to maintain a record of parking permits and vehicle registration data; to identify vehicles and their owners in the event of an emergency or traffic problem.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The Defense Intelligence Agency "Blanket Routine Uses" set forth at the beginning of DIA's compilation of record system notices apply to this record system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:**

**STORAGE:**

Application cards, forms, and accountability logs. Data is also stored and maintained on a microcomputer.

**RETRIEVABILITY:**

By Name, Social Security Number, decal number, state vehicle number, or carpool number.

**SAFEGUARDS:**

Access to records in this system are limited to personnel authorized to handle vehicle registrations and issue parking permits. Building access is controlled and office door is locked during non-duty hours.

**RETENTION AND DISPOSAL:**

Paper records are maintained for one year after departure or loss of eligibility and then destroyed. In the case of automated files, they are erased, overprinted, or destroyed, as appropriate.

**SYSTEM MANAGER(S) AND ADDRESS:**

Building Manager, Defense Intelligence Agency, Washington, DC 20340–3216.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if this system of records contains information about themselves should address written inquiries to the Freedom of Information Office (RTS–l), Defense Intelligence Agency, Washington, DC 20340–3299.

Requests should contain individual's full name, current address, telephone number, Social Security Number and date of birth.

Requests submitted on behalf of other persons *must* include their written, notarized authorization. Providing the Social Security Number is voluntary and will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

**RECORD ACCESS PROCEDURE:**

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Freedom of Information Office (RTS–l), Defense Intelligence Agency, Washington, DC 20340–3299.

Requests should contain individual's full name, current address, telephone number, Social Security Number and date of birth.

Requests submitted on behalf of other persons *must* include their written, notarized authorization. Providing the Social Security Number is voluntary and will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

**CONTESTING RECORD PROCEDURE:**

DIA rules for access to records and for contesting and appealing initial agency determinations are contained in DIA Regulation 12–12; 32 CFR part 292a; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individual concerned, agency officials, Ambassadors, educational institutions, parent service of individual and immediate supervisor on station, and other Government officials.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**LDIA 0150**

**SYSTEM NAME:**

Official Traveler Profile.

**SYSTEM LOCATION:**

Defense Intelligence Agency, Washington, DC 20340–0001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All DIA employees traveling on official business.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name, Social Security Number, office designation, telephone numbers, and airline reservation preferences.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 133s and Executive Order 9397.

**PURPOSE(S):**

To secure commercial and military flight reservations for official DIA travelers. Access is limited to personnel who are authorized to make such arrangements.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The Defense Intelligence Agency "Blanket Routine Uses" set forth at the beginning of DIA's compilation of record system notices apply to this record system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

American Airline Reservation Computer (SABRE).

**RETRIEVABILITY:**

Information is retrieved by individual's name.

**SAFEGUARDS:**

Records are maintained in SABRE computer and accessible only to authorized personnel who have proper access codes and are properly screened, cleared and trained in the protection of privacy information. Computer is located in a secure building with controlled access and the office door is locked during non-duty hours.

**RETENTION AND DISPOSAL:**

Upon departure from DIA, files are deleted from the system.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Deputy Director for Logistics and Engineering Services, Defense Intelligence Agency, Washington, DC 20340–3210.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if this system of records contains information about themselves should address written inquiries to the Freedom of Information Office (RTS–1), Defense Intelligence Agency, Washington, DC 20340–3299.

Requests should contain individual's full-name, current address, telephone number, Social Security Number and date of birth.

Requests submitted on behalf of other persons must include their written, notarized authorization. Providing the Social Security Number is voluntary and will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

**RECORD ACCESS PROCEDURE:**

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Freedom of Information Office (RTS–1), Defense Intelligence Agency, Washington, DC 20340–3299.

Requests should contain individual's full name, current address, telephone number, Social Security Number and date of birth.

Requests submitted on behalf of other persons must include their written, notarized authorization. Providing the Social Security Number is voluntary and will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

**CONTESTING RECORDS PROCEDURE:**

DIA rules for access to records and for contesting and appealing initial agency determinations are contained in DIA Regulation 12–12; 32 CFR part 292a; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individual applicant.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**LDIA 0450**

**SYSTEM NAME:**

Drug-Free Workplace Files.

**SYSTEM LOCATION:**

Defense Intelligence Agency, Washington, DC 20340-0001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees of, and applicants for positions in, the Defense Intelligence Agency.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records relating to the selection, notification, and testing of employees and applicants; collection authentication and chain of custody documents; laboratory test results information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 7301 and 7361; Pub. L. 100-71; and Executive Orders 12564, "Drug-Free Federal Workplace" and 9397.

**PURPOSE(S):**

The system is used to maintain Drug Testing Program Coordinator records relating to the implementation of the program, administration, selection, notification and testing of DIA employees and applicants for employment for use of illegal drugs.

Records are used by the employee's Medical Review Officer under contract to DIA for review and verification of laboratory tests; the employees of the Deputy Director for Human Resources who have the authority to recommend or make offers of employment; the administrator of any employee counseling services program in which the employee is receiving counseling; a supervisory or management official having authority to take or recommend adverse personnel actions against a subject employee.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In order to comply with the provisions of 5 U.S.C. 7301, the DIA "Blanket Routine Uses" do not apply to this system of records.

To a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records maintained in file folders. Automated records may exist on magnetic tape, diskette, or other machine-readable media.

**RETRIEVABILITY:**

Test results are retrieved by surname of applicant or employee or by Social Security Number. Other retrieval fields include agency name, collection site and date of testing.

**SAFEGUARDS:**

File folders are stored in cabinets that are locked when not being used. Electronic records are accessed on computer terminals in supervised areas. All personnel having access to this record system have been trained for proper handling of Privacy Act information.

**RETENTION AND DISPOSAL:**

Files on applicants for positions are maintained for a period not to exceed twelve months. Employee files are retained for two years. In instances of a positive test finding resulting in the reassignment or separation of an employee, retention is for a period of two years after the case is closed. Destruction of paper records is accomplished by shredding or burning. Electronic records are erased and overwritten.

**SYSTEM MANAGER(S) AND ADDRESS:**

Drug Testing Program Coordinator (RHR-4), Defense Intelligence Agency, 3100 Clarendon Boulevard, Arlington, VA 22201-5322.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Office (RTS-1), Defense Intelligence Agency, Washington, DC 20340-3299.

Requests should contain individual's full name, current address, telephone number, Social Security Number, and date of birth.

Requests submitted on behalf of other persons must include their written, notarized authorization. Providing the Social Security Number is voluntary and will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

**RECORD ACCESS PROCEDURE:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Office (RTS-1), Defense Intelligence Agency, Washington, DC 20340-3299.

Requests should contain individual's full name, current address, telephone number, Social Security Number, and date of birth.

Requests submitted on behalf of other persons must include their written, notarized authorization. Providing the Social Security Number is voluntary and will be used solely for identification purposes. Failure to provide the Social Security Number will not affect the individual's rights.

**CONTESTING RECORD PROCEDURE:**

DIA rules for access to records and for contesting and appealing initial agency determinations are contained in DIA Regulation 12-12; 32 CFR part 292a; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

The test subject, medical review officials, collection personnel and others on a case-by-case basis.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 90-13294 Filed 6-7-90; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before July 9, 1990.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** George P. Sotos (202) 732-2174.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that

the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: June 4, 1990.

**George P. Sotos,**

*Acting Director, for Office of Information Resources Management.*

**Office of Educational Research and Improvement**

*Type of Review:* Extension.

*Title:* Application for the Office of Educational Research and Improvement Fellows Program.

*Frequency:* On Occasion.

*Affect Public:* Individuals or households.

*Reporting Burden:*

*Responses:* 45.

Burden Hours: 1000.

*Recordkeeping Burden:*

*Recordkeepers:* 0

Burden Hours: 0.

*Abstract:* This information will be used by prospective fellows to apply for funding under the Office of Educational Research and Improvement Fellows Program. The Department uses this information to make grant awards.

[FR Doc. 90-13337 Filed 6-7-90; 8:45 am]

BILLING CODE 4000-01-M

## Office of Postsecondary Education

## College Work-Study; Community Service Learning Program

**AGENCY:** Department of Education.

**ACTION:** Notice of closing date for filing the Campus-Based Reallocation Form to receive supplemental allocations for the College Work-Study—Community Service Learning (CWS–CSL) program.

**SUMMARY:** The Secretary gives notice to institutions of higher education of the deadline for an institution to apply for supplemental 1990–91 allocations under the CWS–CSL program. The Secretary is authorized under section 442(e) of the Higher Education Act of 1965, as amended (HEA), to reallocate unexpended College Work-Study (CWS) funds that institutions received for expenditures during the 1989–90 award year (July 1, 1989 through June 30, 1990) as supplemental allocations for the 1990–91 award year (July 1, 1990 through June 30, 1991). Supplemental allocations will be issued this fall in accordance with reallocation procedures contained in 34 CFR 675.3 and 675.4.

Section 442(e)(2) of the HEA requires the Secretary to use an amount not in excess of 25 percent of those CWS funds available for reallocation each year to issue supplemental CWS–CSL allocations to eligible institutions for the purpose of initiating, improving and expanding programs of community service learning. CWS–CSL supplemental allocations may be used only for administrative expenses related to the development of work-study programs involving the employment of CWS-eligible students in community service learning activities.

The CWS–CSL program is authorized by section 447 of title IV of the HEA. (42 U.S.C. 2756a).

*Closing Date:* An institution must apply for 1990–91 supplemental allocations for the CWS–CSL program by submitting the completed data cells on the Campus-Based Reallocation Form (ED Form E40–4P; OMB No. 1840–0559).

To ensure consideration for the 1990–91 funds, the Campus-Based Reallocation Form must be mailed or hand-delivered by July 13, 1990.

*Campus-Based Reallocation Forms Delivered by Mail:* A Campus-Based Reallocation Form that is delivered by mail must be addressed to the U.S. Department of Education, Office of Student Financial Assistance, Division of Program Operations and Systems, Campus-Based Programs Branch, 400 Maryland Avenue, SW. (room 4621, Regional Office Building 3), Washington, DC 20202–5452.

An institution must show proof of mailing consisting of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (2) A legibly dated U.S. Postal Service postmark; (3) A dated shipping label invoice, or receipt from a commercial carrier; or (4) Any other proof of mailing acceptable to the Secretary of Education.

If a Campus-Based Reallocation Form is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) A mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

*Campus-Based Reallocation Forms Delivered by Hand:* A Campus-Based Reallocation Form that is delivered by hand must be taken to the U.S. Department of Education, Office of Student Financial Assistance, Division of Program Operations and Systems, Campus-Based Programs Branch, 7th and D Streets, SW., room 4621, Regional Office Building 3, Washington, DC 20202–5452. Hand-delivered Campus-Based Reallocation Forms will be accepted between 8 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays and Federal holidays. A report that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

*Campus-Based Reallocation Form and Information Package:* Campus-Based Reallocation Forms and a CWS–CSL program information package will be mailed to all participating institutions by the Campus-Based Programs Branch in June. Each institution applying for 1990–91 supplemental allocations must submit the form in accordance with the instructions included in the package.

The CWS–CSL program information package is intended to aid applicants in applying for assistance under the CWS–CSL program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the program.

*Applicable Regulations:* Applicable regulations are the 34 CFR part 675 (College Work-Study), 34 CFR part 668 (Student Assistance General Provisions), 34 CFR part 82 (New Restriction on Lobbying), and 34 CFR part 85 (Administrative practices and procedures, Debarment, Grant Programs—Education, Grants administration; Suspension).

*For Further Information Contact:* For further information or to request a Campus-Based Reallocation Form, contact Ms. Gloria Easter, Chief,

Financial Management Section, Division of Program Operations and Systems, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4621, ROB-3), Washington, DC 20202-5452. Telephone (202) 708-8758.

Authority: 42 U.S.C. 2751-2757a.

(Catalog of Federal Domestic Assistance No. 84.033, College Work-Study Program)

Dated: June 1, 1990.

**Leonard L. Haynes III,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 90-13285 Filed 6-7-90; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### American Chemical Society; Unsolicited Financial Assistance Award

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of unsolicited financial assistance award.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR 600.6(a)(2), it is making a financial assistance award based on an unsolicited application satisfying the criteria of 10 CFR 600.14(e)(1) under Grant Number DE-FG01-90CE90043 to the American Chemical Society (ACS) to provide financial assistance for the ACS Project "SEED". The grant will have five one year budget periods with funding provided annually ($46,072 by DOE and $26,299 by ACS in FY 1990). The total estimated cost for the five year project period is $409,001, with DOE furnishing $260,751 and the ACS furnishing the balance of $148,250 in cost sharing.

**OBJECTIVE:** The objectives of the proposed five (5) year project are to increase the number of economically disadvantaged (mostly minority) American students who understand the characteristics of interdisciplinary research, know the educational requirements for success in a scientific career, and have the self-confidence and desire to undertake such a technical education. It is relative to the general public purpose of meeting the growing need for applied researchers capable of inter-disciplinary work required to bring basic scientific projects to practical application.

Based on the receipt of an unsolicted application, eligibility for this award is limited to ACS, a nonprofit society specializing in educational activities. The SEED program is unique since it is the only program of its kind being conducted by a non-profit professional society funded by its own internally generated sources. It is innovative since it focuses on economically disadvantaged students at the high school level. ACS has over twenty years of experience with project SEED and has developed workable administrative procedures and nationwide contacts. ACS will make available contacts and resources that are not available elsewhere. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the Nation's energy consumption.

The term of the grant shall be five years from the effective date of the award.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Procurement Operations, ATTN: Rose Mason, PR-542, 1000 Independence Ave., SW, Washington, DC 20585.

**Thomas S. Keefe,**

*Director, Contract Operations Division "B", Office of Procurement Operations.*

[FR Doc. 90-13338 Filed 6-7-90; 8:45 am]

BILLING CODE 6450-01-M

## Office of the Deputy Secretary

### U.S. Alternative Fuels Council; 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:* United States Alternative Fuels Council.

*Date and Time:* Thursday, June 14, 1990, 1:45 p.m.-5:30 p.m., Friday, June 15, 1990, 10:30 a.m.-4:45 p.m.

*Location:* San Diego Convention Center, 111 West Harbor Boulevard, room 8, San Diego, California.

*Contact:* Mark Bower, Office of Policy, Planning and Analysis, U.S. Department of Energy, Mail Stop PE-50, Washington, DC 20585, phone: (202) 586-3891.

*Purpose of the Council:* To provide advice to the Interagency Committee on Alternative Motor Fuels to help:

1. "* * * coordinate Federal agency efforts to develop and implement a national alternative motor fuels policy."
2. "* * * ensure the development of a long-term plan for the commercialization of alcohols, natural gas, and other potential alternative motor fuels."
3. "* * * ensure communication among representatives of all Federal agencies that are involved in alternative motor fuels projects or that have an interest in such projects."
4. "* * * provide for the exchange of information among persons working with, or interested in working with, the commercialization of alternative motor fuels."

**U.S. Alternative Fuels Council**

*Agenda Outline*

June 14, 1990

*1:45 p.m.-2:45 p.m.*

Clean Air Act: Briefing on Current Situation

Chair: Robert W. Hahn

—Phil Lorang, Environmental Protection Agency
—Carmen Difiglio, U.S. Department of Energy

*3 p.m.-5:30 p.m.*

Presentations on Alternative Fuels Programs and Activities

Chair: Charles R. Imbrecht

[Each presenter will be allowed 20 minutes, followed by 20 minutes of Q&A from the Council.]

—Frank Malligrave, U.S. Department of Energy
—Nancy Deller, Energy Technology Development Division, California Energy Commission
—Brad Holloman, New York State Energy Research and Development Authority
—Mark Ginsberg, Arizona Energy Office

*Agenda Outline*

June 15, 1990

*10:30 a.m.-12 p.m.*

Panel Discussion on "Fuels for Alternative Fuels Vehicles"

Chair: Robert W. Hahn.

[Each panel member will get 5-10 minutes for overview. Council Q&A of panel will begin after all overviews are completed.]

—Steve Plotkin, Office of Technology Assessment
—Carl Moyer, Acurex (Governor's Advisory Board on Alternative Fuels)
—Carmen Difiglio, U.S. Department of Energy
—James Sweeney, Stanford University

*1:30 p.m.-3 p.m.*

Panel Discussion on "Air Modeling and Air Quality Impacts"

Chair: Robert W. Hahn

[Each panel member will get 5-10 minutes for overview. Council Q&A of panel will begin after all overviews are completed.]

—Thomas Austin, Sierra Research
—Phil Lorang, Environmental Protection Agency
—Ted Russell, Carnegie-Mellon University

—Thomas Cackette, California Air Resources Board

*3:15 p.m.–4:45 p.m.*

Council Business Meeting
Chair: Charles R. Imbrecht

—Finalize comments on outline of first report of the Interagency Commission on Alternative Motor Fuels
—Other Items

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Council either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact Mark Bower at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairpersons of the Council are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Minutes:* Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, room 1E190, Forrestal Building, 1000 Independence Ave, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on June 6, 1990.

**J. Robert Franklin,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 90-13394 Filed 6-7-90; 8:45 am]

BILLING CODE 6450-01-M

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## Federal Energy Regulatory Commission

**[Docket Nos. CP90-1439-000, et al.]**

## Trunkline Gas Co., et al.; Natural Gas Certificate Filings

June 1, 1990.

Take notice that the following filings have been made with the Commission:

### 1. Trunkline Gas Co.

[Docket No. CP90-1439-000]

Take notice that on May 29, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-1439-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of pipeline looping facilities which would enable Trunkline to expand the capacity of a segment of its existing Louisiana System, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Trunkline proposes to construct and operate 51.43 miles of 30-inch pipeline loop to its existing Bayou Sale Line between Trunkline's Centerville compressor station in St. Mary Parish, Louisiana and the Kaplan compressor station in Vermilion Parish, Louisiana. It is stated that the proposed loop would increase the capacity of the Bayou Sale line from 330,000 Mcf per day (Mcfd) to 724,000 Mcfd. Trunkline estimates that the project would cost $47,200,000, which would be financed from corporate funds on hand.

Trunkline asserts that the proposed expansion of the Bayou Sale line is required because it would provide additional capacity necessary for movement of natural gas on Trunkline's system for present and future sale and transportation customers. Trunkline explains that there is a severe bottleneck on its Louisiana System at the Centerville Station. Trunkline notes that although it can deliver approximately 1 Bcf per day (Fcfd) into the Centerville station at the eastern end of the Bayou Sale line and likewise can accommodate 1 Bcfd into its Kaplan station at the western end of the line, the capacity of the existing 20-inch line which connects the two stations is only 330,000 Mcfd.

Trunkline states that it has previously relied on firm transportation on a parallel lateral of Tennessee Gas Pipeline Company (Tennessee) as a means of dealing with the bottleneck on the Bayou Sale line. Although it entered into a firm transportation agreement (for transportation of up to 360,000 Dekatherms per day) with Tennessee as recently as October 31, 1988, Trunkline states that it has given notice to terminate the agreement, effective October 31, 1991, becaue it has been unable to negotiate what it views as necessary rate relief. Trunkline notes the history of regular rate increases over the years by Tennessee for the firm transportation service. Trunkline insists that constructing the Bayou Sale line expansion, it can save a minimum of $4.6 million over five years compared to retaining transportation service from Tennessee. Trunkline further asserts that the savings could reach $13.8 million if Tennessee's transportation rates continue to increase as they have historically.

*Comment date:* June 22, 1990, in accordance with Standard Paragraph F at the end of this notice.

### 2. Tennessee Gas Pipeline Co.

[Docket No. CP90-1421-000]

Take notice that on May 25, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90-1421-000 an application pursuant to section 7(b) of the Commission's Regulations under the Natural Gas Act for an order granting permission and approval for the abandonment of a transportation service ofr Chevron U.S.A., Inc. (Chevron),[1] all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that by an order issued by the Commission on December 31, 1977, in Docket No. CP78-39, it was authorized, inter alia, to receive and transport up to 3,000 Mcf of natural gas per day produced from Chevron, Jennings Field, Arnaudet Lease in Acadia Parish, Louisiana, and to redeliver such quantities to Texas Eastern Transmission Corporation in Allen Parish, Louisiana.

It is stated that in accordance to section 15 of Tennessee's Rate Schedule T-56, by letter dated March 20, 1987, Chevron requested termination of the transportation service, to be effective September 27, 1987. It is stated that no gas has been received from Chevron since September 27, 1987. Tennessee has agreed to terminate the agreement as of September 27, 1987, or effective as of the date of the Commission order allowing abandonment. Tennessee's Rate Schedule T-56 would be cancelled, effective upon receipt of the abandonment authorization, it is stated. Tennessee further states that no facilities are proposed to be abandoned.

*Comment date:* June 22, 1990, in accordance with Standard Paragraph F at the end of the notice.

### 3. Mississippi River Transmission Corp.

[Docket Nos. CP90-1440-000, CP90-1441-000, CP90-1442-000, CP90-1443-000, CP90-1444-000, CP90-1445-000, CP90-1446-000, CP90-1447-000, CP90-1448-000, CP90-1449-000, CP90-1450-000]

Take notice that Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124. (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the

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[1] Transportation service is rendered under the terms of a September 27, 1977, agreement between Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (presently known as Tennessee) and Gulf Oil Corporation. Chevron U.S.A., Inc. has succeeded to the rights and obligations of Gulf Oil Corporation.

Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89-1121-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

[1] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* July 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

| Docket No. (date filed) | Shipper name (type) | Peak day, average day, annual MMBtu | Receipt points | Delivery points | Contract date, rate schedule, service type | Related docket, start up date |
|---|---|---|---|---|---|---|
| CP90-1440-000 (5-30-90) | Mississippi Lime Company (end user) | 4,000<br>4,000<br>1,460,000 | LA, TX, IL, AR, OK | MO | 12-29-89<br>FTS<br>Firm | ST90-2791-000<br>4-1-90 |
| CP90-1441-000 (5-30-90) | National Steel Corporation (end user) | 22,700<br>22,700<br>8,285,500 | LA, TX, IL, OK, AR | IL | 1-22-90<br>FTS<br>Firm | ST90-2783-000<br>4-1-90 |
| CP90-1442-000 (5-30-90) | Pfizer Pigments, Inc. (end user) | 950<br>950<br>346,750 | LA, TX, IL, OK, AR | IL | 12-29-89<br>FTS<br>Firm | ST90-2785-000<br>4-1-90 |
| CP90-1443-000 (5-30-90) | Chevron U.S.A., Inc. (producer) | 27,500<br>27,500<br>10,037,500 | TX | TX | 3-27-90<br>ITS<br>Interruptible | ST90-2789-000<br>4-4-90 |
| CP90-1444-000 (5-30-90) | GAF Chemical Corporation (end user) | 1,530<br>1,530<br>558,450 | LA, TX, OK, IL, AR | MO | 1-5-90<br>FTS<br>Firm | ST90-2790-000<br>4-1-90 |
| CP90-1445-000 (5-30-90) | ASARCO, Inc. (end user) | 800<br>800<br>292,000 | LA, TX, OK, IL, AR | MO | 1-5-90<br>FTS<br>Firm | ST90-2780-000<br>4-1-90 |
| CP90-1446-000 (5-30-90) | AmGas, Inc. (marketer) | 450<br>38<br>14,000 | LA, TX, AR, IL | IL | 3-27-90<br>ITS<br>Interruptible | ST90-2781-000<br>4-5-90 |
| CP90-1447-000 (5-30-90) | General Motors Corporation (end user) | 5,419<br>2,522<br>920,567 | LA, TX, AR, IL | MO | 1-18-90<br>ITS<br>Interruptible | ST90-2786-000<br>4-1-90 |
| CP90-1448-000 (5-30-90) | The Doe Run Company (end user) | 1,125<br>1,125<br>410,625 | LA, TX, IL, OK, AR | MO | 2-1-90<br>FTS<br>Firm | ST90-2787-000<br>4-1-90 |
| CP90-1449-000 (5-30-90) | PPG Industries, Inc. (end user) | 2,700<br>1,354<br>494,100 | LA, TX, IL, OK, AR | MO | 3-30-90<br>FTS<br>Firm | ST90-2784-000<br>4-1-90 |
| CP90-1450-000 (5-30-90) | LaRoche Industries, Inc. (end user) | 815<br>815<br>297,475 | LA, TX, IL, OK, AR | MO | 3-2-90<br>FTS<br>Firm | ST90-2788-000<br>4-1-90 |

**4. National Fuel Gas Supply Corp.**

[Docket No. CP90-1380-000]

Take notice that on May 16, 1990, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP90-1380-000 an application, as supplemented on May 25, 1990, pursuant to section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations under the Natural Gas Act for a certificate of public convenience and necessity so as to authorize for a one-year term transportation of natural gas on an interruptible basis on behalf of National Fuel Gas Distribution Corporation (Distribution), Empire Exploration, Inc. (Empire), and North East Heat & Light Company (North East), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, National Fuel proposes to transport up to 89,301 Mcf per day on an interruptible basis on behalf of Distribution for 187 end-user customers of Distribution identified in appendix A.[1] It is alleged that with regard to each of Distribution's 187 end-users, National Fuel requests authority that would enable the end-user to deliver any volume of gas to National Fuel from any of the receipt points identified in the application as long as the total volumes delivered does not exceed its applicable maximum daily volumes. In addition, National Fuel proposes to transport up to 19,800 Mcf per day on behalf of Empire and 1,170 Mcf per day on behalf of North East for the account of the end-user customers identified in appendix B.[2]

National Fuel indicates that it would provide the proposed transportation

[1] Appendix A, which identifies Distribution's end-user customers and the proposed maximum daily volumes for each of the customers, can be picked up in the Office of Public Information, as it will not be published in the **Federal Register**.

[2] Appendix B identifies Empire's 7 end-user customers and North East's 3 end-user customers and the maximum daily volumes attributable to each of the customers can be picked up in the Office of Public Information, as it, along with appendix A, will not be published in the **Federal Register**.

service through the use of existing facilities. In addition, national Fuel states that it would charge the rate presently authorized under National Fuel's Rate Schedule T-1. National Fuel seeks a limited-term one-year certificate with pregranted abandonment to discontinue service at the expiration of such term. In addition, National Fuel seeks pregranted abandonment authorization to curtail service to any shipper which is delinquent in payments under the transportation service agreement, provided that National Fuel gives the delinquent and of Natonal Fuel's intent to curtail if the delinquency is not remedied within thirty days of the date of the notice, and then only upon written notice to the Commission.

*Comment date:* June 22, 1990, in accordance with Standard Paragraph F at the end of this notice.

**5. Mississippi River Transmission**

[Docket Nos. CP90-1433-000, CP90-1434-000, CP90-1435-000, CP90-1436-000, CP90-1437-000]

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

*Comment date:* June 16, 1990, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-13270 Filed 6-7-90; 8:45 am]

BILLING CODE 6717-01-M

[3] These prior notice requests are not consolidated.

**[Docket Nos. TA90-1-21-001 and TM90-9-21-001]**

## Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 1, 1990.

Take notice that Columbia Gas Transmission Corporation (Columbia) on May 30, 1990, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective May 1, 1990:

Substitute Second Revised Sheet No. 26
Substitute Second Revised Sheet No. 26A
Substitute Second Revised Sheet No. 26B
Substitute Second Revised Sheet No. 26C

Columbia states that the foregoing tariff sheets are being filed in compliance with the Commission's order issued April 30, 1990 in Docket Nos. TA90-1-21-000 and TM90-9-21-000. Such order directed Columbia to revise the Schedule A1 section of its March 1, 1990 filing and to submit an explanation of its reasons for not meeting the third test interval of the assessment of past performance.

Columbia also states that the instant filing reflects the revised April 1, 1990 non-gas rates filed in Docket No. RP89-250 as approved by Commission order issued on May 24, 1990. The revised non-gas rates reflect a decrease of $.073 per Dth in the Demand rate and a decrease of .65¢ per Dth in the Commodity rate. No change in the total effective purchased gas rates is proposed in the instant filing.

Columbia states that copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989). All such protests should be filed on or before June 8, 1990. Protests with be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-13271 Filed 6-7-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-10-51-000]

## Great Lakes Gas Transmission Co.; Proposed Changes in Gas Tariff Purchased Gas Adjustment Clause Provisions

June 1, 1990.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on May 30, 1990, tendered for filing Twenty-Seventh Revised Sheet Nos. 57(i) and 57(ii) and Thirteenth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

The above tariff sheets reflected revised current PGA rates for the months of May through July, 1990. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective May 1, 1990, in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

FR Doc. 90-13272 Filed 6-7-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. EL90-28-000]

## Gulf States Utilities Co.; Filing

June 1, 1990.

Take notice that on March 27, 1990, Gulf States Utilities Company (Gulf States) tendered for filing a petition for declaratory order. In its petition Gulf States requests that the Commission should confirm that Cajun Electric Power Cooperative, Inc. is responsible for payment of all applicable charges under Rate Schedule WSD, including those resulting from the application of the minimum billing provisions of the schedule, through June 30, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 20, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-13273 Filed 6-7-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP90-119-000]

## Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 1, 1990.

Take notice that on May 31, 1990, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff revised tariff sheets as listed on appendix A to their filing which reflect a major rate change from currently effective rates and proposed changes in its tariff. Texas Eastern requests an effective date of July 1, 1990.

Texas Eastern states that the rate filing will increase the level of Texas Eastern's jurisdictional rates to provide an overall annual increase in revenues of approximately $197 million. The rates reflected in the revised tariff sheets are designed to bring Texas Eastern's revenues to the level of its jurisdictional cost of service and reflect changes in plant investment costs, transmission and compression of gas by others, operation and maintenance expenses and rate of return.

Texas Eastern stated that the accompanying statement of nature, reason and basis for the proposed change in rates accompanying its filing outlines the various factors which have given rise to the rate adjustments for sales services and transportation services to which this section 4 filing applies.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 11, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-13274 Filed 6-7-90; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. TA90-1-43-001]

## Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 1, 1990.

Take notice that Williams Natural Gas Company (WNG) on May 30, 1990 made a filing in compliance with the Commission letter order issued April 30, 1990 in Docket Nos. TA90-1-43-000 and TM90-7-43-000.

WNG states that the April 30, 1990 order directed WNG to file within 30 days of the order: (1) More detailed justification as to why WNG's unpaid accruals greater than three years old should continue to be recognized as gas costs and (2) a proposal to adjust WNG's carrying charge computations for its gas storage losses to reflect a cash basis.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before June 8, 1990. Protests will

be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 90-13275 Filed 6-7-90; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3785-7]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 21, 1990 through May 25, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environment impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13949).

**Draft EISs**

ERP No. D-NOA-A91056-00, Rating LO, Atlantic Coast Red Drum Fishery Management Plan, Implementation, Exclusive Economic Zone (EEZ) of the east coast of MA, NH, RI, CT, NY, NJ, PA, DE, MD, VA, NC, SC, GA, and FL.

**Summary**

Review of the final EIS has been completed and the project found to be satisfactory.

ERP No. D-USN-E84000-00, Rating EC2, Empress II (Electromagnetic Pulse Radiation Environment Simulator for Ships) Operation, Gulf of Mexico and Berthing Site Selection, Mobile, AL; Gulfport, MS or Pasagoula, MS.

**Summary**

EPA has some environmental concerns regarding the absence of specific information/data regarding the EMP phenomenon on electronic and living systems and additional data should be presented in the final EIS.

**Final EISs**

ERP No. F-OSM-E01009-TN, Flat Fork and Mud Creek Watershed Surface Coal Mining Operations, Unsuitable Land Designation, Approval, Morgan County, TN.

**Summary**

EPA's review concluded that surface mining activities in the petition area would result in moderate to severe impacts to Frozen Head State Park and natural areas.

Dated: June 5, 1990

**William Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 90-13341 Filed 6-7-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3785-6]

### Environmental Impact Statements; Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073.

Availability of Environmental Impact Statements Filed May 28, 1990 through June 01, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900180, Draft EIS, EPA, LA, Mermentau River-Gulf of Mexico Navigation Channel, Ocean Dredged Material Disposal Site (ODMDS), Designation, Cameron Parish, LA, July 23, 1990, *Contact:* Norm Thomas (214) 655-2260.

EIS No. 900181, Draft EIS, BOP, NY, Brooklyn Metropolitan Detention Center, Construction and Operation, New York City, NY, July 23, 1990, *Contact:* William J. Patrick (202) 514-6471.

EIS No. 900182, Final EIS, NPS, AK, Wrangell-St. Elias National Park and Preserve, Mining Operations Management Plan, Implementation, AK, July 09, 1990, *Contact:* Boyd Evison (907) 257-2690.

EIS No. 900183, Final EIS, NPS, AK, Denali National Park and Preserve, Mining Operations Management Plan, Implementation, AK, July 09, 1990, *Contact:* Boyd Evison (907) 257-2690.

EIS No. 900184, Final EIS, NPS, AK, Yukon-Charley Rivers National Preserve, Mining Operations Management Plan, Implementation, AK, July 09, 1990, *Contact:* Boyd Evison (907) 257-2690.

EIS No. 900185, Final EIS, COE, WV, South Fork South Branch Potomac River (Formerly Moorfield River) Local Flood Protection Plan, Implementation, Hardy County, WV, July 09, 1990, *Contact:* J. Williams Haines (301) 962-8154.

EIS No. 900186, Second Final Supple, USA, TT, Johnston Atoll Chemical Agent Disposal System (JACADs) for Transportation, Storage and Destruction of European Stockpile of Chemical Munitions, Updated Information, Johnston Atoll, TT. *Due:* July 09, 1990. *Contact:* Ralph Carespia (301) 671-4910.

EIS No. 900187, Final EIS, FRC, MA, CT, NH, NY, RI, TN, Iroquois and Tennessee Gas Transmission Pipelines Project, Construction and Operation, MA, CT, NH, NY, RI and TN, July 09, 1990, *Contact:* Mark Jensen (202) 208-1121.

EIS No. 900188, Draft EIS, FHW, DC, MD, VA, Washington Bypass Construction, I-95 in Virginia to I-70 and U.S. 50 in Maryland, Funding, Section 404 Permit and Coast Guard River Crossing Permit, Several Counties, MD, VA, and DC, July 23, 1990, *Contact:* Roberet E. Gatz (301) 962-3742.

EIS No. 900189, Final EIS, TVA, TN, Adoption—Tennessee Federal Program, Surface Coal Mining Operations Comprehensive Impacts, Coal Leasing Decisions, Campbell and Scott Counties, TN, July 09, 1990, *Contact:* Dale K. Fowler (615) 632-2217.

The Tennessee Valley Authority has Adopted the U.S. Department of the Interior's Office of Surface Mining Reclamation and Enforcement, FEIS #850096, filed 3-15-90.

EIS No. 900190, Final EIS, AFS, OR, Malheur National Forest, Land and Resource Management Plan, Implementation, Grant, Malheur, Baker and Harney Counties, OR, July 09, 1990, *Contact:* Cathy Barbouletos (503) 575-1731.

EIS No. 900191, Draft EIS, EPA, FL, Cedar Bay Cogeneration Facility, Construction and Operation, NPDES Permit, Duval County, FL, July 23, 1990, *Contact:* Heinz Mueller (404) 347-3776.

Dated: June 5, 1990.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 90-13340 Filed 6-8-90; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Applications for Consolidated Hearings; Determinations, etc.; Shiloh Broadcasting, Inc., et al.

1. The Commission has before it the following groups of mutually exclusive applications for 11 new FM stations:

I.

| Applicant, city and state | File No. | MM docket No. |
|---|---|---|
| A. Shiloh Broadcasting, Inc.; Laredo, TX. | BPH-880324MX | 90-259 |
| B. San Juana Elvira Tellez; Laredo, TX. | BPH-880324NH | |

| Applicant, city and state | File No. | MM docket No. |
|---|---|---|
| C. Humberto L. Lopez & Minerva; R. Lopez & Martin Martinez, & Carols Lopez d/b/a Lomar Spanish Broadcasting; Laredo, TX. | BPH-880324OC | |
| D. Paul Garza, Jr.; Laredo, TX. | BPH-880324OF | |

*Issue Heading and Applicants*

1. See Appendix, A
2. See Appendix, A
3. See Appendix, A
4. Air Hazard, B,C
5. Comparative, A–D
6. Ultimate, A–D

II.

| Applicant, city and state | File No. | MM docket No. |
|---|---|---|
| A. Terry L. O'Quinn, et al. d/b/a/ TBJ Broadcasting Partnership; Walterboro, SC. | BPH-880601ND | 90-265 |
| B. Augusta Radio Fellowship Institute, Inc.; Walterboro, SC. | BPED/MM-880602 | ..... |

*Issue Heading and Applicants*

1. Financial Qualifications, B
2. Misrepresentation, B
3. Comparative, A,B
4. Ultimate, A,B

III.

| Applicant, city and state | File No. | MM docket no. |
|---|---|---|
| A. Class A. Communications; Phoenix, NY. | BPH-880504MI | 90-254 |
| B. Robert D. Short, Jr.; Phoenix, NY. | BPH-880505MC | ..... |
| C. Phoenix FM Broadcasters Limited Partnership; Phoenix, NY. | BPH-880505MD | ..... |
| D. Jerrell E. Kautz and Sinan Mimaroglu, A Partnership; Phoenix, NY. | BPH-880505MK | ..... |
| E. Three Rivers Radio Company; Phoenix, NY. | BPH-880505NF | ..... |
| F. Zebra Broadcasting Co., Inc.; Phoenix, NY. | BPH-880505PB | ..... |

*Issue Heading and Applicants*

1. Comparative, A, B
2. Ultimate, A, B

IV.

| Applicant, city and state | File No. | MM docket no. |
|---|---|---|
| A. WMRI, Inc.; Ellettsville, IN. | BPH-880722MI | 90-255 |
| B. Katieco, Inc.; Ellettsville, IN. | BPH-880725MH | ..... |
| C. McLean County Broadcasters, Inc.; Ellettsville, IN. | BPH-880725MK | ..... |
| D. Pamela R. Jones; Ellettsville, IN. | BPH-880725ML | ..... |

*Issue Heading and Applicants*

1. Air Hazard, B
2. Comparative, A, B, C, D
3. Ultimate, A, B, C, D

V.

| Applicant, city and state | File No. | MM docket no. |
|---|---|---|
| A. Rogersville Radio Broadcasting; Rogersville, AL. | BPH-880711MR | 90-267 |
| B. Eugene G. Hutchens; Rogersville, AL. | BPH-880711MS | ..... |
| C. Doris Harrison; Rogersville, AL. | BPH-880711MT | ..... |

*Issue Heading and Applicants*

1. Air Hazard, B
2. Comparative, A, B, C
3. Ultimate, A, B, C

VI.

| Applicant, city and state | File No. | MM docket No. |
|---|---|---|
| A. Stephanie Linn; Gleneden Beach, OR. | BPH-890118MA | 90-268 |
| B. Hal D. Fowler; Gleneden Beach, OR. | BPH-890118MB | |

*Issue Heading and Applicants*

1. Environmental, A,B
2. Air Hazard, A
2. Comparative, A,B
3. Ultimate, A,B

VII.

| Applicant, city and state | File No. | MM docket No. |
|---|---|---|
| A. JIREH's Broadcasting, Limited Partnership; Jacksonville, NC. | BPH-880420MG | 90-250 |
| B. Maranatha Broadcasting Company, Inc.; Jacksonville, NC. | BPH-880421MC | |
| C. Brenda Ferguson and Miles Hamilton Ferguson, Jr. d/b/a Ferguson Radio Partnership; Jacksonville, NC. | BPH-880421MT | |
| D. High Communications Partnership; Jacksonville, NC. | BPH-880421MV | |
| E. Shirlee D. Popkin; Jacksonville, NC. | BPH-880421NI | |
| F. Jacksonville Broadcaasters; Jacksonville, NC. | BPH-880421MZ (dismissed herein) | |

*Issue Heading and Applicants*

1. Financial Qualifications, A,E
2. Air Hazard, B
3. Comparative, A–E
4. Ultimate, A–E

VIII.

| Applicant, city and state | File No. | MM docket No. |
|---|---|---|
| A. Fog Communications; South Oroville, CA. | BPH-880713MD | 90-253 |
| B. Melvin N. Peterson; South Oroville, CA. | BPH-880714NF | |
| C. Linda Adams; South Oroville, CA. | BPH-880714NI | |

*Issue Heading and Applicants*

1. Air Hazard, A–C
2. Comparative, A–C
3. Ultimate, A–C

IX.

| Applicant, city and state | File No. | MM docket No. |
|---|---|---|
| A. Dimitri Bankston; Lima, OH. | BPH-880407ME | 90-252 |
| B. American Christian Radio Services, Inc.; Lima, OH. | BPH-880407MF | |
| C. Western Ohio Broadcasting Co.; Lima, OH. | BPH-880407ML | |
| D. Ottawa Broadcasting, Inc.; Lima, OH. | BPH-880407MM | |

*Issue Heading and Applicants*

1. See Appendix, D
2. See Appendix, D

3. See Appendix, D
4. Ultimate, A–D
5. Comparative, A–D

X.

| Applicant, city and state | File No. | MM docket No. |
|---|---|---|
| A. Cooke-Donze Broadcasting; Columbia, MO. | BPH–880531MO | 90–251 |
| B. Nicdem Media, Inc.; Columbia, MO. | BPH–880531MZ | |
| C. Mid-State Partnership; Columbia, MO. | BPH–880615ME | |
| D. Tiger Broadcasting Company; Columbia, MO. | BPH–880615MF | |

*Issue Heading and Applicants*

1. Comparative, A, B, C, D
2. Ultimate, A, B, C, D

XI.

| Applicant, city and State | File No. | MM Docket No. |
|---|---|---|
| A. Butte Broadcasting Company, Inc.; Orland, CA. | BPH–880714MG | |
| B. Edward E. Abramson; Orland, CA. | BPH–880714ND | |

*Issue Heading and Applicants*

1. Comparative, A,B
2. Ultimate, A,B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchsed from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

**Appendix (Laredo, Texas)**

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of A (Shiloh).
2. To determine whether A's (Shiloh's) organizational structure is a sham.
3. To determine, from the evidence adduced pursuant to Issues 1 through 2 above, whether A (Shiloh) possesses the basic qualifications to be a licensee of the facilities sought herein.

**Appendix (Lima, Ohio)**

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of D (OBI).
2. To determine whether D's (OBI) organizational structure is a sham.
3. To determine, from the evidence adduced pursuant to Issues 1 and 2 above, whether D (OBI) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90–13345 Filed 6–7–90; 8:45 am]

BILLNG CODE 6712–01–M

## FEDERAL MARITIME COMMISSION

**[Docket No. 90–16]**

### Seacon Terminals, Inc. v. The Port of Seattle; Filing of Complaint and Assignment

Notice is given that a complaint filed by Seacon Terminals, Inc. ("Complainant") against The Port of Seattle ("Respondent") was served June 5, 1990. Complainant alleges that Respondent has violated sections 10(d)(1), (d)(3), (b)(11), and (b)(12) of the Shipping Act of 1984, 46 U.S.C. app. 1709(d)(1), (d)(3), (b)(11), and (b)(12), by unreasonably and unfairly refusing to renew, extend or renegotiate its lease with Complainant of marine terminal facilities or lease any other marine terminal facilities to Complainant, engaging in various unjust and unreasonable practices involving interference with Complainant's customer relationships and the exclusion of Complainant as a marine terminal operator at the Port of Seattle, and providing undue or unreasonable preferences or advantages to Stevedoring Services of America, allegedly Complainant's only competitor and the dominant terminal operator in the Port of Seattle.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by June 5, 1991, and the final decision of the Commission shall be issued by October 3, 1991.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 90–13349 Filed 6–7–90; 8:45 am]

BILLING CODE 6730–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Annual Medicare Beneficiary Survey—0990–0181—This survey will obtain information from a sample of Medicare beneficiaries on their experience and satisfaction with the administration of the Medicare program. The information will be used to identify inefficiencies and monitor the effectiveness of corrective action taken by the Department. *Respondents:* individuals; *Number of Respondents:* 640; *Frequency of Response:* one time; *Average Burden per Response:* 20 minutes; *Total Burden:* 214 hours.

2. HHS Procurement—Solicitation and Contracts—0990–0115—Respondents to certain HHS solicitations are required to submit technical proposals with varying formats. The Department uses the information to assess an offeror's capability to perform. *Respondents:* Businesses or other for-profit, non-profit institutions, state or local governments; *Burden information for Indian Health*

*Service proposals—Annual Respondents:* 450; *Annual Frequency:* one time; *Average Burden per Response:* 160 hours; *Annual Burden:* 72,000 hours—*Burden Information for non-IHS technical proposals—Annual Respondents:* 9,124; *Annual Frequency:* one time; *Average Burden per Response:* 290 hours; *Annual Burden:* 2,645,960 hours—*Total Annual Burden:* 2,717,960 hours.

*OMB Desk Officer:* Angela Antonelli.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619-0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: May 30, 1990.

**James F. Trickett,**

*Deputy Assistant Secretary for Management and Acquisition.*

[FR Doc. 90-13245 Filed 6-7-90; 8:45 am]

BILLING CODE 4150-04-M

## Health Care Financing Administration

### Reconsideration of Disapproval of Illinois State Plan Amendment (SPA); Hearing

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of hearing.

**SUMMARY:** This notice announces an administrative hearing on July 18, 1990 in the 16th floor Conference room, 105 West Adams, Chicago, Illinois to reconsider our decision to disapprove Illinois State Plan Amendment 89-11.

**CLOSING DATE:** Requests to participate in the hearing as a party must be received by the Docket Clerk on or before June 25, 1990.

**FOR FURTHER INFORMATION CONTACT:** Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966-4471.

**SUPPLEMENTARY INFORMATION:** This notice announces an administrative hearing to reconsider our decision to disapprove Illinois State Plan amendment (SPA) number 89-11.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(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 at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Illinois SPA 89-11 makes several changes in the rate setting methodology for skilled nursing and intermediate care facilities (SNFs and ICFs). The State requests that the amendment be effective July 1, 1989. HCFA approved the amendment with an effective date of August 19, 1989.

The issue in this matter is whether the State's proposed effective date violates the public notice requirements at 42 CFR 447.253(f) and 42 CFR 447.205.

Federal regulations at 42 CFR 430.12(c) require a State plan to be amended to reflect new or revised Federal statutes or regulations, or material changes in any phase of State law, organization, policy, or State agency operation. In accordance with Federal regulations at 42 CFR 447.253(f), the Medicaid agency must also comply with the public notice requirements in § 447.205 when it is proposing significant changes to its methods or standards for setting payment rates for inpatient hospital or long-term care facility services. Section 447.205(d)(1) requires that the notice be published before the proposed effective date of the change. Sections 447.205 (c) and (d) set forth additional requirements regarding the content and publication of the notice.

The plan amendment was submitted by the State on September 29, 1989, together with assurances and related rate information. On August 18, 1989, the State published a public notice which met the requirements of 42 CFR 447.205. Accordingly, HCFA believes the effective date for the amendment cannot be July 1, 1989. However, HCFA approved the amendment with an effective date of August 19, 1989, the day following the publication of the State's notice.

The notice to Illinois announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Ms. Kathleen Kustra

*Director, Illinois Department of Public Aid, Jesse B. Harris Building, 100 S. Grand Avenue East, Springfield, Illinois 62762-0001*

Dear Ms. Kustra: Your request for reconsideration of the decision to disapprove Illinois State Plan Amendment (SPA) 89-11 was received on May 7, 1990. Illinois SPA 89-11 makes several changes in the rate setting methodology for skilled nursing and intermediate care facilities, with a proposed effective date of July 1, 1989.

The issue in this matter is whether the State's proposed effective date violates the public notice requirements at 42 CFR 447.253(f) and 42 CFR 447.205.

I am scheduling a hearing on your request to be held on July 18, 1990, at 10:00 a.m. in the 16th floor conference room, 105 West Adams, Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966-4471.

Sincerely,

Gail R. Wilensky, Ph.D.,

*Administrator.*

**Authority:** Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: June 4, 1990.

**Gail R. Wilensky,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 90-13264 Filed 6-7-90; 8:45 am]

BILLING CODE 4120-03-M

## Public Health Service

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, May 25, 1990.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. National Health Service Corps (NHSC) State Loan Repayment Program and Special Repayment Programs (42 CFR part 62)—0915-0131—Program Regulations for the NHSC Loan Repayment and Special Repayment Programs define the procedures for (a) participants requesting reimbursement for extra taxes paid on program benefits, (b) participants required to document their training status annually, and (c) States applying to participate in the State Loan Repayment Program. *Respondents:* Individuals or households, States or local governments.

| | No. of respondents | No. of hours per response | No. of responses per respondent |
|---|---|---|---|
| 62.25(c)—Tax reimbursement requests | 210 | 1.25 | 1 |
| 62.26(b)(2)—Training documentation | 1 | 1 | 1 |

Estimated annual burden..... 264 hours.

2. National Disease Surveillance Program—1. Case Reports—0920-0009—Case reports on notifiable diseases furnished by State and Territorial health departments provide information on epidemiological characteristics (age, sex, geographic location, etc.) that contribute toward resolving public health problems. Data are used to detect epidemiologic trends or locate cases requiring control efforts. The purpose of this revision is to obtain approval for an HIV case report form. *Respondents:* State or local governments; *Number of Respondents:* 55; *Number of Responses per Respondent:* 3,831.1; *Average Burden per Response:* .222 hours; *Estimated Annual Burden:* 46,725 hours.

3. National Coal Workers Autopsy Program (42 CFR 37.204) Regulation—0920-0021—At the death of any miner, DHHS is authorized to provide an autopsy to be performed on such miner, with the consent of his surviving next-of-kin. Data are collected on the occupational and smoking histories of the deceased miner and correlated with pathologic and X-ray findings. *Respondents:* Individuals or households.

| | No. of respondents | No. of hours per response | No. of responses per respondent |
|---|---|---|---|
| Pathologists | 300 | .167 | 1 |
| Next-of-Kin | 300 | .25 | 1 |

Estimated annual burden..... 125 hours.

4. Prospective Evaluation of Health-care Workers Exposed to Blood from Patients Infected with HIV—0920-0131—This project evaluates surveillance of health-care workers with potential exposure to blood or body fluids from patients with AIDS or AIDS-related illnesses in an attempt to define the risk to health-care workers of contracting HIV infection. *Respondents:* Individuals or households; *Number of Respondents:* 600; *Number of Responses per Respondent:* 2.67; *Average Burden per Response:* .30 hours; *Estimated Annual Burden:* 484 hours.

*OMB Desk Officer:* Shannah Koss-McCallum

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: June 4, 1990.

**James M. Friedman,**

*Acting Deputy Assistant Secretary for Health (Planning and Evaluation).*

[FR Doc. 90-13265 Filed 06-07-90; 8:45 am]

BILLING CODE 4160-17-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

**[Docket No. N-90-3012; FR-2767-N-02]**

### Selection Criteria for Entitlement Communities To Receive Technical Assistance in Support of Public-Private Partnerships for Low- and Moderate-Income Housing in Community Development Block Grant Communities

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** On March 1, 1990, the Department published a Notice (55 FR 7430) that it was seeking organizations interested in providing technical assistance to Community Development Block Grant (CDBG) entitlement communities and to certain non-profit organizations. The purpose of today's Notice is to announce the criteria that HUD (and the cooperating parties selected to provide the technical assistance) will use in selecting the beneficiaries of this assistance.

**FOR FURTHER INFORMATION CONTACT:** Chris Newman or Aliceann Nolte, Program Support Division, Office of Procurement and Contracts, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-5662.

**SUPPLEMENTARY INFORMATION:** The selection criteria are as follows.

1. To be eligible to receive the assistance more fully described in HUD's March 1, 1990 Notice, a community must be an entitlement metropolitan city or urban county currently participating in the Community Development Block Grant (CDBG) program (as defined in Title I of the Housing and Community Development Act of 1974.)

2. In selecting communities, HUD and the cooperating parties will consider each community's need for affordable housing, as evidenced by such indicators as Housing Assistance Plan (HAP) needs; Comprehensive Homeless Assistance Plan (CHAP) needs (if any); Fair Market Rents (FMR), changes in FMR, extent of waiting lists for Public Housing and Section 8 rental subsidies, and other available statistical measures, which may include vacancy rates, statistics concerning abandonment of dwellings, unemployment rates, ratio of low- and moderate-income housing units to total housing units, and the percentage of a community's residents that is made up of low- and moderate-income persons.

3. In selecting communities, HUD will consider each community's history of compliance with HUD programs, with particular attention to management and financial system problems and the community's fair housing efforts. Serious deficiencies in this area will be reviewed in conjunction with the other criteria.

4. In selecting communities, HUD will consider each community's financial and legal commitment to meeting the housing needs of its residents. HUD will seek to select communities representing a range of efforts, choosing some communities just beginning to address the whole range of affordable housing issues and some communities with ongoing efforts that require assistance with specific projects or programs.

5. In selecting communities, HUD will seek a balance in the nationwide geographic distribution and among different-sized communities.

No response to this Notice is required or expected. After selection of a cooperating party or parties to provide

the technical assistance, HUD and the technical assistance providers will select communities in accordance with the above criteria. The technical assistance providers will be responsible for contacting communities to determine their interest and willingness to participate.

**Other Matters**

This announcement is categorically excluded under 24 CFR 50.20(b) from the environmental review requirements of the National Environmental Policy Act.

Dated: May 31, 1990.

**Anna Kondratas,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 90-13309 Filed 6-7-90; 8:45 am]

BILLING CODE 4210-29-M

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**[Docket No. N-90-1917; FR-2606-N-75]**

## Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

**EFFECTIVE DATE:** June 8, 1990.

**ADDRESS:** For further information, contact James Forsberg, Room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired, (202) 708-2565. (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans' Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (this is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's **Federal Register** notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Army:* HQ-DA, Attn: DAEN-ZCI-P-Robert Conte, Room 1E671 Pentagon, Washington, DC 20360-2600, (202) 693-4583; *GSA:* James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405 (202) 535-7067; *Department of Transportation:* Angelo Picillo, Deputy Director, Administrative Services and Property Management, DOT, 400 Seventh Street SW., Room 10319D, Washington, DC 20590, (202) 366-4246; *Department of Commerce:* Jim McCombs, Chief, National Program Division, Room 1037, 14th Street and Constitution Avenue NW., Washington, DC 20237, (202) 377-3580. (These are not toll-free numbers.)

Dated: June 1, 1990.

**Paul Roitman Bardack,**

*Deputy Assistant Secretary for Program Policy Development and Evaluation.*

**Suitable Land (by State)**

*Illinois*

National Weather Service, Meteorological Observatory, Leckrone Airport, Salem, IL Co: Marion
Landholding Agency: Commerce
Property Number: 279010005
Status: Excess
Comment: 8.3 acres with weather observation buildings, portion in airport runway zone.

*Rhode Island*

Land Adjacent to Pastore Federal Building, Providence, RI Co: Providence
Landholding Agency: GSA
Property Number: 549010059
Status: Excess
Comment: 8208 sq. ft.; Limitation: Rhode Island Department of Transportation formally requested land for highway use.

**Suitable Buildings (by State)**

*Colorado*

Alemeda Facility, 350 S. Santa Fe Drive, Denver, CO Co: Denver
Landholding Agency: DOT
Property Number: 879010014
Status: Unutilized
Comment: 22752 sq. ft.; 2 floors; concrete building with 5700 sq. ft. parking area; will be vacant 11/1/90.

*Georgia*

Bldg. 20701, Fort Gordon, Augusta, GA Co: Richmond
Location: Located on Barnes Avenue and 20th street.

Landholding Agency: Army
Property Number: 219014281
Status: Unutilized
Comment: 4524 sq. ft.; 2 story wood structure; needs major rehab; off-site use only.

Bldg. 20703, Fort Gordon, Augusta, GA Co: Richmond
Location: Located on 20th street.
Landholding Agency: Army
Property Number: 219014282
Status: Underutilized
Comment: 4524 sq. ft.; 2 story wood structure; needs major rehab; off-site use only.

Bldg. 20705, Fort Gordon, Augusta, GA Co: Richmond
Location: Located on 20th street.
Landholding Agency: Army
Property Number: 219014283
Status: Unutilized
Comment: 2352 sq. ft.; 1 story wood structure; needs major rehab; off-site use only.

Bldg. 20709, Fort Gordon, Augusta, GA Co: Richmond
Location: Located on 20th street.
Landholding Agency: Army
Property Number: 219014284
Status: Underutilized
Comment: 4524 sq. ft.; 2 story wood structure; need major rehab; off-site use only.

Bldg. 34402, Fort Gordon, GA Co: Richmond
Location: Located on Avenue of the States.
Landholding Agency: Army
Property Number: 219014285
Status: Underutilized
Comment: 4524 sq. ft.; 2 story wood structure; needs major rehab; off-site use only.

Bldg. 34404, Fort Gordon, Augusta, GA Co: Richmond
Location: Located on Avenue of the States.
Landholding Agency: Army
Property Number: 219014286
Status: Underutilized
Comment: 4524 sq. ft.; 2 story wood structure; needs major rehab; off-site use only.

Bldg. 35401, Fort Gordon, Augusta, GA Co: Richmond
Location: Located on Avenue of the States.
Landholding Agency: Army
Property Number: 219014287
Status: Underutilized
Comment: 4524 sq. ft.; 2 story wood structure; needs major rehab; off-site use only.

Bldg. 36701, Fort Gordon, Augusta, GA Co: Richmond
Location: Located on Chamberlain Avenue at Center Golf Course.
Landholding Agency: Army
Property Number: 219014288
Status: Underutilized
Comment: 196 sq. ft.; 1 story brick structure; off-site use only.

*Oklahoma*

Bldg. T-4378, Fort Sill, 4378 Walker Street, Lawton, OK Co: Comanche
Landholding Agency: Army
Property Number: 219014323
Status: Unutilized
Comment: 1296 sq. ft.; 1 story wood frame; possible asbestos; most recent use—administrative support.

Bldg. T-4381, Fort Sill, 4381 Bragg Road, Lawton, OK Co: Comanche
Landholding Agency: Army
Property Number: 219014324
Status: Unutilized
Comment: 3036 sq. ft.; 1 story wood frame building; most recent use—storage; possible asbestos.

Bldg. T-825, Fort Sill, Corner of Macomb Road and Burrell Road
Lawton, OK Co: Comanche
Landholding Agency: Army
Property Number: 219014325
Status: Unutilized
Comment: 1820 sq. ft.; 1 story wood frame building; most recent use—recreation (stables)

Bldg. T-827, Fort Sill, Corner of Macomb Road and Burrell Road, Lawton, OK Co: Comanche
Landholding Agency: Army
Property Number: 219014326
Status: Unutilized
Comment: 1240 sq. ft.; 1 story wood frame building; most recent use—storage; prior use—stables.

Bldg. T-833, Fort Sill, Corner Macomb Road and Burrell Road, Lawton, OK Co: Comanche
Landholding Agency: Army
Property Number: 219014327
Status: Unutilized
Comment: 3976 sq. ft.; 1 story wood frame building; most recent use—stables.

Bldg. T-836, Fort Sill, Corner of Macomb Road and Burrell Road, Lawton, OK Co: Comanche
Landholding Agency: Army
Property Number: 219014328
Status: Unutilized
Comment: 1341 sq. ft.; 1 story wood frame; most recent use—storage; possible asbestos.

Bldg. T-4367, Fort Sill, 4367 McKee Street, Lawton, OK Co: Comanche
Landholding Agency: Army
Property Number: 219014329
Status: Unutilized
Comment: 3036 sq. ft.; 1 story wood frame; possible asbestos; most recent use—dining facility.

Bldg. T-4370, Fort Sill, 4370 Walker Street, Lawton, OK Co: Comanche
Landholding Agency: Army
Property Number: 219014330
Status: Unutilized
Comment: 1296 sq. ft.; 1 story wood frame; possible asbestos; most recent use—administrative support.

Bldg. T-4379, Fort Sill, 4379 Bragg Road, Lawton, OK Co: Comanche
Landholding Agency: Army
Property Number: 219014331
Status: Unutilized
Comment: 4425 sq. ft.; 2 story wood frame; most recent use—barracks; possible asbestos.

Bldg. P00050, Fort Sill, 50 Sheridan Road, Lawton, OK Co: Comanche
Landholding Agency: Army
Property Number: 219014332
Status: Unutilized
Comment: 1533 sq. ft.; 2 story wood frame; most recent use—bath house.

Bldg. T-4368, Fort Sill, 4368 McKee Street, Lawton, OK Co: Comanche
Landholding Agency: Army
Property Number: 219014333
Status: Unutilized
Comment: 4525 sq. ft.; 2 story wood frame building; possible asbestos; most recent use—barracks.

Bldg. T-4380, Fort Sill, 4380 Bragg Road, Lawton, OK Co: Comanche
Landholding Agency: Army
Property Number: 219014334
Status: Unutilized
Comment: 4425 sq. ft.; 2 story wood frame; most recent use—barracks.

Bldg. T-4369, Fort Sill, 4369 McKee Street, Lawton, OK Co: Comanche
Landholding Agency: Army
Property Number: 219014335
Status: Unutilized
Comment: 4425 sq. ft.; 2 story wood frame building; possible asbestos; most recent use—barracks.

*Texas*

Bldg. T-227, Fort Sam Houston, San Antonio, TX Co: Bexar
Landholding Agency: Army
Property Number: 219014275
Status: Excess
Comment: 2987 sq. ft.; 1 story wood structure; major rehab needed.

Bldg. 1189, Fort Sam Houston, San Antonio, TX Co: Bexar
Landholding Agency: Army
Property Number: 219014276
Status: Excess
Comment: 9190 sq. ft.; 1 story wood structure; needs major rehabilitation.

Bldg. 1192, Fort Sam Houston, San Antonio, TX Co: Bexar
Landholding Agency: Army
Property Number: 219014277
Status: Excess
Comment: 9190 sq. ft.; 1 story wood structure; needs major rehab.

Bldg. T4001, Fort Sam Houston, San Antonio, TX Co: Bexar
Landholding Agency: Army
Property Number: 219014278
Status: Underutilized
Comment: 48000 sq. ft.; 2 story wood frame building with metal siding; needs rehab; possible asbestos.

Bldg. T-4004, Fort Sam Houston, San Antonio, TX Co: Bexar
Landholding Agency: Army
Property Number: 219014279
Status: Underutilized
Comment: 48000 sq. ft.; 1 story wood frame with metal siding; needs rehab; possible asbestos.

Bldg. T-1193, Fort Sam Houston, San Antonio, TX Co: Bexar
Landholding Agency: Army
Property Number: 219014280
Status: Unutilized
Comment: 9190 sq. ft.; 1 story wood frame structure; needs major rehab.

Universe of Properties:

| | |
|---|---|
| Total | 340 |
| Suitable | 30 |
| Suitable buildings | 28 |
| Suitable land | 2 |
| Unsuitable | 310 |

Unsuitable buildings.....309
Unsuitable land.....1
Number of resubmissions.....0

[FR Doc. 90-13150 Filed 6-7-90; 8:45 am]
BILLING CODE 4210-29-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ES-020-00-4410-10]

### Intention To Prepare Aberdeen Lock and Dam Planning Analysis/ Environmental Assessment (PA/EA); Jackson District Office, MS

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent (NOI) to prepare the PA/EA for the mineral resources located on the Corps of Engineers' Aberdeen Lock and Dam, which is a component of the Tennessee-Tombigbee Waterway Project, Aberdeen, Mississippi and an invitation for other agencies to request cooperating status during the preparation of the plan and for the public to participate in the identification of issues and concerns.

**SUMMARY:** This notice describes the proposed planning action, the geographic area affected, anticipated issues, the disciplines to be used to prepare the plan, the kind and extent of public participation opportunities, the appropriate BLM Office and persons to contact for further information, and the location and availability of documents relevant to the planning process.

**DATES:** Public comment and participation are integral parts of the planning process. Comments on the anticipated issues will be accepted until June 22, 1990.

**ADDRESSES:** Comments on this NOI, agencies requesting cooperating status, or requests to be included on the mailing list should be sent to Bert Rodgers, District Manager, Bureau of Land Management, 411 Briarwood Drive, Suite 404, Jackson, MS 392096.

**FOR FURTHER INFORMATION CONTACT:** Ken Adams, Team Leader, or Ed Roberson, ADM, Lands & Renewable Resources, Jackson District Office, (601) 977-5400.

**SUPPLEMENTARY INFORMATION:**

#### 1. Description of the Proposed Planning Action

The Bureau of Land Management (BLM) is responsible for the management of Federal Mineral Ownership (FMO) for the benefit of the people of the United States. This includes FMO resources acquired by other Federal agencies. The BLM proposes to develop a planning analysis/environmental assessment for the management of the mineral resources located on the Aberdeen Lock and Dam component of the Army Corps of Engineers' Tennessee-Tombigbee Waterway Project located at Aberdeen, Mississippi that will meet the requirements of the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA). The surface is managed by the Army Corps of Engineers. This plan will utilize existing management for the surface tracts. Any development of Federal mineral resources on this project cannot be undertaken without the consent to lease from the Corps of Engineers. Also, the Corps will be requested to provide any stipulations they deem necessary to mitigate potential negative impacts resulting from mineral development. This plan will provide management goals, objectives, and direction relating to mineral activities within the Aberdeen Lock and Dam Project.

#### 2. The Geographic Area Covered by the Proposed Plan

The Aberdeen Lock and Dam Project Area is located in Monroe County, Mississippi. The proposed plan area includes some tracts within the city of Aberdeen. Current regulations prohibit leasing within the limits of incorporated cities unless the Federal oil and gas is being drained by private wells. These tracts will be addressed in this planning document should drainage occur in the future.

The plan area lies within portions of the following sections:

**Chickasaw Meridian, Mississippi**

T. 14 S., R. 7 E., Sec. 2, 3, 10, 11, 14, 15, 23, and 26
T. 13 S., R. 7 E., Sec. 10, 14, 23, 26, 27, and 34

**Huntsville Meridian, Mississippi**

T. 14 S., R. 19 W., Sec. 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, and 27
T. 13 S., R. 19 W., Sec. 10, 15, 16, 22, 28, and 33

The total acreage involved is approximately 5,870 acres.

#### 3. General Types of Issues Anticipated

The public is invited to participate in the identification of issues related to the Aberdeen Lock and Dam PA/EA. The following are anticipated issues identified by BLM.

*a. Mineral Development*

The Federal Government maintains a policy to encourage private industry to explore and develop Federal minerals to satisfy the local and national need. Exploration activities for oil and gas in this area could potentially conflict with existing land uses.

#### 4. Disciplines Represented on the Planning Team

The PA/EA team will be comprised of the following disciplines: Team Leader/ Geologist, Archaeologist, Natural Resource Specialist, Realty Specialist, Planning and Environmental Coordinator, Environmental Scientist, Petroleum Engineer, GIS Coordinator, Public Affairs Officer.

#### 5. Public Participation

Public comment is currently being solicited in regards to anticipated issues. A public scoping meeting is tentatively being scheduled for June 25, 1990 in the city of Aberdeen. Times and location will be announced at a later date. After the draft PA/EA has been published, another meeting will be held to solicit public comments on the document.

Any agency that wishes to assist in the preparation of this planning document may request cooperating status by writing to the District Manager of the BLM Jackson District Office at 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206. Persons interested in participating in the planning process should submit their name and address for inclusion on the Aberdeen PA/EA mailing list to the address listed above.

Informal public comments and input are encouraged throughout the development of the PA/EA.

#### 6. Location of Planning Documents

Planning Documents and other pertinent information may be examined at the Bureau of Land Management's Jackson District Office in Jackson, Mississippi between the hours 7:30 a.m. and 4 p.m., Monday through Friday.

Bert Rodgers,
*District Manager.*

[FR Doc. 90-13288 Filed 6-7-90; 8:45 am]
BILLING CODE 4310-GJ-M

[NM-060-00-4211-90]

### Roswell District Multiple Use Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Roswell District Multiple Use Advisory Council Meeting/Tour.

**SUMMARY:** This notice sets forth the schedule and agenda of a forthcoming field tour by the Roswell District Multiple Use Advisory Council.

**DATES:** Wednesday, July 11, 1990, beginning at 8 a.m.

**FOR FURTHER INFORMATION CONTACT:** David L. Mari, Associate District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201, (505) 622-9042.

**SUPPLEMENTARY INFORMATION:** The proposed tour will include the Ft. Stanton riparian areas and campgrounds. Updates on the acquisition of the Valley of Fires Recreation Area (formerly a State Park), proposed land exchanges and the fire program/projections will be presented. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours within 30 days following the meeting. Copies will be available for the cost of duplication.

**Timothy R. Kreager,**

*Acting District Manager.*

[FR Doc. 90-13259 Filed 6-7-90; 8:45 am]

BILLING CODE 4310-FB-M

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[CO-942-90-4730-12]

## Colorado; Filing of Plats of Survey

May 30, 1990.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., May 30, 1990.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines, and the subdivision of sections 32 and 33, T. 38 N., R. 16 W., New Mexico Principal Meridian, Colorado, Group No. 717, was accepted May 22, 1990.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of certain sections, T. 37 N., R. 16 W., New Mexico Principal Meridian, Colorado, Group No. 717, was accepted May 22, 1990.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

**Jack A. Eaves,**

*Chief, Cadastral Surveyor for Colorado.*

[FR Doc. 90-13260 Filed 6-7-90; 8:45 am]

BILLING CODE 4310-JB-M

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[ID-942-00-4730-12]

## Idaho; Filing of Plats of Survey

The plats of survey of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., June 1, 1990.

The plat representing the dependent resurvey of the subdivision of Warren Townsite in section 11, T. 22N., R. 6 E., Boise Meridian, Idaho, Group No. 731, was accepted May 29, 1990.

The plat representing the dependent resurvey of a portion of the First Standard Parallel South (south boundary, T. 6 S., R. 43 E.), and a portion of the west boundary, T. 7 S., R. 44 E., Boise Meridian, Idaho, Group No. 783, was accepted May 29, 1990.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat representing the dependent resurvey of a portion of the Fourth Standard Parallel North (south boundary, T. 18 N., R. 25 E.), portions of the south boundary and subdivisional lines, and the subdivision of certain sections, T. 17 N., R. 25 E., Boise Meridian, Idaho, Group No. 747, was accepted May 29, 1990.

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines, meanders of Sims Island, and Mineral Survey No. 3022, Cougar and Cougar No. 2 lodes, and the subdivision of section 18, T. 45 N., R. 4 E., Boise Meridian, Idaho, Group No. 752, was accepted May 29, 1990.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about these lands should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: June 1, 1990.

**Jerrold E. Knight,**

*Acting Chief Cadastral Surveyor for Idaho.*

[FR Doc. 90-13261 Filed 6-7-90; 8:45 am]

BILLING CODE 4310-GG-M

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[AK-932-00-4214-10; F-86826]

## Proposed Withdrawal and Opportunity for Public Meeting; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service proposes to withdraw approximately 14.38 acres of public lands as administrative sites for management of Gates of the Arctic National Park and Preserve near Coldfoot, Alaska. This notice closes the land for up to 2 years from surface entry, mining, and mineral leasing.

**DATES:** Comments and requests for a public meeting must be received by September 6, 1990.

**ADDRESSES:** Comments and meeting requests should be sent to the Alaska State Director, BLM, 222 W. 7th Avenue, #13, Anchorage, Alaska 99513-7599.

**FOR FURTHER INFORMATION CONTACT:** Sandra C. Thomas, BLM Alaska State Office, 907-271-5477.

**SUPPLEMENTARY INFORMATION:** On May 30, 1990, a petition was approved allowing the National Park Service to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining and mineral leasing laws, subject to valid existing rights:

**Fairbanks Meridian**

*Site 1*

All that tract of land within the SW¼NE¼, Sec. 15, T. 28 N., R. 12 W., and depicted on NPS drawing number 185/41022, dated November 2, 1989, filed in BLM case file F-86826 and more particularly described as follows:

Commencing at the intersection of the Dalton Highway and the Venetie Trail in the SW¼NW¼, Sec. 15, T. 28 N., R. 12 W.;

Thence, easterly following the southern edge of the Venetie Trail approximately 2,300 feet to the northeast corner of lot 7, Coldfoot Subdivision, marked by an aluminum cap and being corner No. 1, the true point of beginning;

Thence, N. 77°04'46"E., continuing along the southern edge of the Venetie Trail, 400 feet to corner No. 2, marked by an aluminum cap;

Thence, leaving the Venetie Trail, S.12°55'14"E., 250 feet to corner No. 3, marked by an aluminum cap;

Thence, S.77°04'46"W., 339.32 feet to corner No. 4 marked by an aluminum cap, on the eastern line of lot 7, Coldfoot Subdivison;

Thence, N.26°33'48"W., along said eastern line of lot 7, 257.26 feet to close at corner No. 1, the True Point of Beginning.

The area described contains approximately 2.12 acres.

*Site 2*

A tract of unsurveyed land within the S½NW¼, Sec. 15, T. 28 N., R. 12 W.

The Point of Beginning being the intersection of the Dalton Highway and the Venetie Trail;

Thence, southeasterly along the northern edge of the Venetie Trail approximately 155 feet to corner No. 1;

Thence, southeasterly along the northern edge of the Venetie Trail approximately 800 feet to corner No. 2;

Thence, northwesterly approximately 260 feet to corner No. 3;

Thence, southwesterly approximately 220 feet to corner No. 4;
Thence, northwesterly approximately 375 feet to corner No. 5;
Thence, southwesterly approximately 260 feet to close at corner No. 1

The area described contains approximately 4.60 acres.

*Site 3*

All that tract of land lying within the SW¼NE¼, Sec. 15, T. 28 N., R. 12 W., and depicted on NPS drawing number 185/41022A, dated November 6, 1989, filed in BLM case file F-86826 and more particularly described as follows:

Commencing at the intersection of the Dalton Highway and the Venetie Trail in the SW¼NW¼, Sec. 15, T. 28 N., R. 12 W.;

Thence, easterly following the southern edge of the Venetie Trail approximately 2,700 feet to the northeast corner of Parcel A of BLM Serial No. F-81271, marked by an aluminum cap and being corner No. 1, the true point of beginning;
Thence, S. 86°31'05" E., continuing along the southern edge of the Venetie Trail, 301.41 feet to corner No. 2, the point of curve marked by an aluminum cap;
Thence, on a simple curve to the right with a radius of 150 feet and arc length of 197.34 feet to corner No. 3, the point of tangent marked by an aluminum cap;
Thence, S. 11°08'29"W., 341.91 feet to corner No. 4, marked by an aluminum cap;
Thence, leaving the Venetie Trail, S. 34°05'19" W., 657.50 feet to corner No. 5, marked by an aluminum cap;
Thence, N. 71°57'03" W., 170 feet to corner No. 6, marked by an aluminum cap;
Thence, N. 15°48'53" E., 500.47 feet to corner No. 7, marked by an aluminum cap;
Thence, N. 12°55'14" W., 247.43 feet to corner No. 8, marked by an aluminum cap, being the southeast corner of said Parcel A of BLM Serial No. F-81271;
Thence, N. 12°55'14" W., along the eastern line of said Parcel A, 250 feet to close at corner No. 1, the true point of beginning.

The area described contains approximately 7.66 acres.

The areas described aggregate approximately 14.38 acres.

The purpose of the proposed withdrawal is for use as administrative sites for management of the Gates of the Arctic National Park and Preserve.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the schedule date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The segregation made by this order shall overlap but nor otherwise affect the segregation pursuant to Public Land Order No. 5150 and Public Land Order No. 5180.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the National Park Service.

**Sue A. Wolf,**

*Chief, Branch of Land Resources.*

FR Doc. 90-13262 Filed 6-7-90; 8:45 am]

BILLING CODE 4310-JA-M

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## Bureau of Reclamation

### San Luis Unit Drainage Program, Central Valley Project, California

**AGENCY:** Bureau of Reclamation; Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Department of the Interior, Bureau of Reclamation (Reclamation), will prepare an environmental impact statement (EIS) on proposed actions to manage irrigation drainage from the San Luis Unit (SLU) of the Central Valley Project (CVP). Proposed drainage management actions will be selected on the basis of criteria adopted to maintain environmental quality and provide for continued agricultural production in a manner that would satisfy the settlement requirements of the *Barcellos and Wolfsen, Inc., et al.* vs *Westlands Water District et al.* (No. CV 79-106-EDP) Judgement and comply with all Federal and State laws. A wide range of action options has been examined through the interagency San Joaquin Valley Drainage Program and all reasonable alternatives will be discussed in comparative form in the EIS, providing a clear basis of choice for the decisionmaker and the public. The alternative of no action will also be analyzed, providing a baseline for choice among the reasonable alternatives.

**DATES AND LOCATIONS:** There will be three public scoping meetings:

June 27, 1990, 7:30 p.m., Mendota Community Center, 195 Smoot Street, Mendota CA.

June 28, 1990, 7:30 p.m., Ramada Inn, 324 East Shaw Avenue, Fresno CA.

June 29, 1990, 1 p.m., Beverly Garland Hotel, 1780 Tribute Road, Sacramento CA.

**FOR FURTHER INFORMATION CONTACT:** Art Tuma, Activity Manager (MP-405), U.S. Bureau of Reclamation, telephone: (916) 978-5045, at 2800 Cottage Way, Sacramento, California 95825.

**SUPPLEMENTARY INFORMATION:** The SLU, authorized by the San Luis Unit Act of 1960 (Pub. 86-488), included construction of San Luis Dam, San Luis Canal, Coalinga Canal, San Luis Drain, distribution systems, drains, pumping facilities, and other appurtenant works. The authorization provided for joint development with the State of California. The State agreed to provide 55 percent of the main project facilities funding and the State Department of Water Resources will operate the major facilities as a part of both the CVP and the California State Water Project. SLU construction started in 1963 and the first significant water deliveries began in 1968. Currently, SLU facilities provide about 1.4 million acre-feet of water annually to project lands.

Initial SLU project planning recognized the need to provide drainage to protect project lands from rising water tables and accumulation of salts which would otherwise render the soil unsuitable for farming. The authorizing legislation provided for the construction of an interceptor drain that would serve the SLU area and discharge to the Sacramento-San Joaquin Delta. Reclamation began construction of the San Luis Drain (SLD) in 1968. By 1975, 82 miles of the planned 188-mile SLD had been completed, and 1283 acres of shallow ponds (later named Kesterson Reservoir) were constructed about 80 miles south of the Delta to provide temporary storage to facilitate future control of the SLD flow into the Delta. Construction was then suspended pending determination of the final point of discharge for the SLD. During the ensuing years, Kesterson Reservoir received drain water and functioned as an evaporation facility while negotiations and investigations

continued concerning a final point of discharge.

In 1984, waterfowl deaths and deformities at Kesterson were linked to elevated levels of selenium in the food chain. In 1985, the State Water Resources Control Board directed Reclamation to clean up and abate the nuisance conditions at Kesterson. The Department of the Interior announced that Kesterson would be closed, and a phased elimination of San Luis Drain discharges was completed by June 1986. As a result of the closure of Kesterson, the SLU does not have a system to manage the drainage generated by continued irrigation.

In 1986, a U.S. District Court judgement settled a lawsuit between Westlands Water District (WWD), Reclamation, and various landowners and water users in WWD. The settlement, commonly called the Barcellos Judgement, addressed drainage service to WWD as well as other issues. The Barcellos Judgement provisions relating to drainage service include:

- The Federal Parties (Reclamation), in consultation and cooperation with the District (WWD), shall develop, adopt, and submit to the District by December 31, 1991, a drainage plan for drainage service facilities.
- The Drainage Service Facilities included in the Drainage Plan shall (a) in the aggregate have sufficient capacity and capability to transport, treat as necessary, and dispose of the annual quantity of subsurface agricultural drainage water from the District (not less than 60,000 acre-feet and not more than 100,000 acre-feet) required to be disposed of by December 31, 2007, as projected in the Drainage Plan, (b) be cost effective and financially feasible, and (c) be capable of construction, acquisition and operation in compliance with all applicable law.

Reclamation has established the San Luis Unit Drainage Program to develop a plan responsive to this settlement as well as drainage issues throughout the SLU. This effort will utilize and build upon the studies and recommendations of the interagency San Joaquin Valley Drainage Program. Reclamation's objective is to identify and implement both short and long-term actions to manage the drainage of the SLU, compatible with protection and improvement of fish and wildlife habitat and populations and with Federal and State law. Long-term, in this case, denotes an equilibrium condition where there is no buildup of salts in the soil, so that agriculture and wildlife habitat remain viable indefinitely. Because the drainage plan required by the judgement must be completed by the end of 1991 and because out-of-valley or long-term alternatives appear uncertain, the focus of the initial activities will be on short-term, in-valley altenatives. These alternatives will employ technologies that can be implemented in the time frame stipulated by the Barcellos Judgement.

A total of 30 drainage options developed through the San Joaquin Valley Drainage Program and applicable to the San Luis Unit was evaluated to develop a preliminary list of alternatives. Fourteen of these options appear reasonable and implementable within the time frame of the Barcellos Judgement. Combinations of these 145 options will be evaluated as three alternatives for comparison with the no-action alternative in the EIS. The three alternatives will represent three levels of source control and corresponding capacities of treatment and disposal facilities. The three levels of source control are basically characterized as (1) No Federal participation in source control; (2) seepage control and near surface ground-water pumping; and (3) in addition to alternative 2 (above), localized source control features and institutional or economic incentives to reduce drainage.

Dated: June 1, 1990.

Joe D. Hall,

*Deputy Commissioner.*

[FR Doc. 90-13325 Filed 6-7-90; 8:45 am]

BILLING CODE 4310-09-M

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## Fish and Wildlife Service

[Charging Code: 40135-8421]

## Establishment of the Bayou Sauvage National Wildlife Refuge, Orleans Parish, LA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that an area of land and water in Orleans Parish, Louisiana, consisting of approximately 18,000 acres hereinafter referred to as the Bayou Sauvage National Wildlife Refuge, has been acquired by the United States. This refuge will be protected and administered in accordance with the Congressional Acts, Treaties, and Executive Orders which cover the operation of the National Wildlife Refuge System.

**FOR FURTHER INFORMATION CONTACT:**

Alan C. Bonsack, Senior Realty Officer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 75 Spring Street SW., Room. 1240, Atlanta, Georgia 30303; telephone (404) 331-3543 or FTS 841-3543.

Refuge Manager Howard Poitevint, Bogue Chitto National Wildlife Refuge, U.S. Fish and Wildlife Service, 1010 Gause Boulevard, Building 936, Slidell, Louisiana 70458; telephone (504) 646-7555 or FTS 680-7555.

**SUPPLEMENTAL INFORMATION:** The act to provide for the establishment and acquisition of the Bayou Sauvage National Wildlife Refuge was enacted by Congress on November 10, 1986 (Pub. L. 645). It provided that when sufficient lands and waters had been acquired for the administration of the refuge, the Secretary shall establish Bayou Sauvage National Wildlife Refuge by publication of notice to that effect in the **Federal Register.**

Public sportfishing during 1990 and 1991 will be permitted during the period March 16-October 31 in accordance with applicable provisions of State and Federal laws and regulations. Other recreational uses such as sightseeing, nature observation, photography and similar activities are permitted during daylight hours only and only on those areas prescribed by the Refuge Manager, Bogue Chitto National Wildlife Refuge. Maps of the project are available for public inspection in the Refuges and Wildlife Office, U.S. Fish and Wildlife Service, 75 Spring Street SW., Room. 1240, Atlanta, Georgia 30303. Maps delineating public use and access are available at the office of the Refuge Manager, Bogue Chitto National Wildlife Refuge, 1010 Gause Boulevard, Building 936, Slidell, Louisiana 70458.

James W. Pulliam, Jr.,

*Regional Director.*

[FR Doc. 90-13326 Filed 6-7-90; 8:45 am]

BILLING CODE 4310-55-M

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RIN 1018-AA24

## U.S. Fish and Wildlife Service Migratory Bird Regulations Committee Meetings

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of meetings.

**SUMMARY:** The U.S. Fish and Wildlife Service Migratory Bird Regulations Committee will meet on June 19 and 20 to review preliminary information on the status of migratory game birds and to develop 1990-91 migratory game bird regulation recommendations for presentation at the June 21 public hearing to be held in Washington, DC., and will meet immediately after the public hearing to review the public comments presented at the hearing and develop proposed 1990-91 early-season

hunting regulations frameworks for certain migratory game birds. The early-season regulations cover doves and pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; early (September) waterfowl seasons; extended falconry seasons; and all migratory game birds in Alaska, Puerto Rico, and the Virgin Islands.

**DATES:** June 19, 20, and 21, 1990.

**ADDRESSES:** The meetings on June 19, 20 and 21 will be held in the Board Room of the American Institute of Architects Building, 1735 New York Avenue (at the corner of 18th and E Streets, NW.), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634-Arlington Square, Department of the Interior, Washington, DC 20240, telephone (703) 358-1714.

**SUPPLEMENTARY INFORMATION:** The Migratory Bird Regulations Committee of the U.S. Fish and Wildlife Service, including Flyway Council Consultants to the Committee, will meet in Washington, DC on June 19 and 20 at 8:30 a.m. and on June 21 at about 2 p.m. in the Board Room of the American Institute of Architects Building.

The meeting on June 19 is to receive and consider staff reports on the 1990 status of migratory birds and to discuss and develop recommendations for 1990-91 early-season hunting regulations to be presented at the public hearing to be held in Washington, DC on June 21 at 9 a.m. The June 20 meeting is to assure that the Service's regulations proposals presented at the public hearing reflect the Director's position with the benefit of full consultation on the issues. The June 21 meeting of the Service Regulations Committee is to review the public comments presented at the hearing and to determine on the basis of those comments whether any modifications need to be recommended to the Director in regard to the regulations recommendations presented at the hearing.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee that are attended by any person outside the Department, these meetings will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Dated: June 1, 1990.

**Bruce Blanchard,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 90-13320 Filed 6-7-90; 8:45 am]

BILLING CODE 4310-55-M

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## Joint Scoping Meeting for Fish and Wildlife Service/North Dakota State Water Commission Souris River Basin-Wide Study and Corps of Engineers Souris River Low Flow Augmentation Study

**AGENCY:** Department of the Interior.

**ACTION:** Notice of scoping meeting.

**SUMMARY:** Pursuant to the National Wildlife Administration Act (16 U.S.C. 668dd), the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e) and the National Environmental Policy Act of 1969 as Amended (42 U.S.C. 4321-4347), the United States Fish and Wildlife Service, the North Dakota State Water Commission and the Corps of Engineers are conducting a scoping meeting to solicit public comments and suggestions on the Souris River Basin-Wide Management Study as required by an agreement signed by the Governor of North Dakota and the Regional Director of the Fish and Wildlife Service on January 13, 1987, and on the Souris River Low Flow Augmentation Study as required by Senate Report 100-381. In addition to comments and suggestions received at the meeting, written comments will be accepted up to July 20, 1990.

**DATES:** The scoping meeting will be held on June 19, 1990, from 1 p.m. until all speakers are heard.

**PLACE:** The scoping meeting will be held in the Minot City Council Chambers, Minot Civic Center, Minot, North Dakota.

**AGENDA:** At this scoping meeting, the Fish and Wildlife Service and the North Dakota State Water Commission will describe the mandate they have from their agencies with regard to the review of water management in the Souris River Basin. Comments and suggestions on that mandate, and proposals for carrying out that mandate will be solicited. In particular, the agencies are interested in suggestions for continuing public input to the study process.

The Corps of Engineers will describe the purpose of the Souris River Low Flow Augmentation Study, and its relationship to the Basin-Wide Water Management Study. Comments and suggestions will be solicited, and the public input process described.

For further information, individuals may contact Mr. Robert Green, Regional Hydrologist, Region 6, at (303) 236-5322.

Dated: May 21, 1990.

**Galen L. Buterbaugh,**

*Regional Director, Region 6, U.S. Fish and Wildlife Service.*

[FR Doc. 90-13402 Filed 6-7-90; 8:45 am]

BILLING CODE 4310-55-M

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## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337-TA-300]**

## Certain Doxorubicin and Preparations Containing Same; Commission Decision Not To Review an Initial Determination Designating the Investigation More Complicated

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 13) issued by the presiding administrative law judge (ALJ) designating the above-captioned investigation "more complicated" and extending the administrative deadline for issuance of the final ID by two months, *i.e.*, from March 21, 1990, to May 21, 1990. The Commission has also extended the deadline for completion of the investigation by two months, *i.e.*, from June 21, 1990, to August 21, 1990.

**ADDRESSES:** Copies of the ID 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, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000.

**FOR FURTHER INFORMATION CONTACT:** Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1092.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

**SUPPLEMENTARY INFORMATION:** On February 16, 1990, the presiding ALJ issued an ID desginating the subject investigation "more complicated" because of the complexity of technology underlying the investigation, the complex legal issues involved,

unanticipated delays in the proceedings, and the impending temporary unavailability of the ALJ due to scheduled surgery. No petitions for review of the ID or government agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.59(a) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.59(a)(1989)).

By order of the Commission.

Issued: June 4, 1990.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 90-13310 Filed 6-7-90; 8:45 am]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 431]

### Adoption of the Uniform Railroad Costing System for the Purposes of Determining Variable Costs in Surcharge and Jurisdictional Threshold Determinations

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Discontinuance of proceeding.

**SUMMARY:** The Commission has decided to discontinue this proceeding since the matters under consideration were subsumed and subsequently resolved in a decision in Ex Parte No. 431 (Sub-No. 1), *Uniform Railroad Costing System*, 5 I.C.C.2d 894 (1989).

**EFFECTIVE DATE:** July 8, 1990.

**FOR FURTHER INFORMATION CONTACT:** William T. Bono, (202) 275-7354; Thomas A. Schmitz, (202) 275-7549 (TDD for hearing impaired (202) 275-1721).

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. Assistance for the hearing impaired is available through TDD Services at (202) 275-1721.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 10321, 10705a and 10709.

*Decided:* May 31, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

*Secretary.*

[FR Doc. 90-13324 Filed 6-7-90; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Training and Technical Assistance for Native American Children's Justice Act Grantees

**AGENCY:** Office for Victims of Crime, Office of Justice Programs, Justice.

**ACTION:** Notice of availability of funds for training and technical assistance for Native American Children's Justice Act (CJA) grantees.

**SUMMARY:** The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), U.S. Department of Justice is publishing this notice to announce a $150,000 discretionary grant program designed to provide training and technical assistance to Native American Indian tribes and organizations that have received a grant from CJA Discretionary Grant Program for Native Americans.

The statutory authority for this program is found in section 1404(c)(1)(A) of the Victims of Crime Act of 1984 (VOCA), Public Law 98-473, as amended, 42 U.S.C. 10603(c)(1)(A).

**EFFECTIVE DATE:** Applications are due by August 17, 1990.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this notice should be directed to the Federal Crime Victims Division, Office for Victims of Crime, 633 Indiana Avenue NW., Washington, DC 20531, (202) 514-6444.

**SUPPLEMENTARY INFORMATION:**

#### Background

Since 1987, OVC has identified victim assistance services in Indian Country as a program priority. In November 1988, OVC awarded Assistance to Victims of Federal Crime in Indian Country grants to nine states to provide assistance to Native Americans who are victims of crime. Eligibility was limited to the victim assistance agency in those states where the United States Government, through such agencies as the Bureau of Indian Affairs (BIA), the Federal Bureau of Investigation (FBI), or the U.S. Attorney's Office, has the authority to investigate or prosecute crimes committed in Indian country. The nine states (Arizona, Michigan, North Dakota, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming) received a total of $1,004,500. The grants ranged from $35,500 to $250,500. The state-designated victim assistance agencies awarded 29 subgrants to tribes and Native American organizations on reservations located in their states. These grants enable tribes to address the pressing needs of Native American victims of crime who have very limited access to victim assistance services. The Indian tribes are using the funds for a variety of victim related programs including shelters for abused women, crisis response to sexual assault victims, grief support groups, child abuse treatment, training for law enforcement officers for more effective responses to the needs of victims, and general victim service programs.

On October 1, 1989, a total of $703,000 was awarded to six additional states (Idaho, Kansas, Minnesota, Montana, Nevada, and New Mexico) to provide victim assistance services in Indian country. Additional "on-reservation" victim assistance programs may be funded in the future.

On February 6, 1990, OVC awarded 10 grants under the CJA Discretionary Grant Program for Native Americans to the following tribes to improve the investigation and prosecution of child sexual abuse cases.

| | |
|---|---|
| Assiniboine & Sioux Tribes (Fort Peck Indian Reservation, Montana) | $50,000 |
| Cherokee Nation of Oklahoma | 52,000 |
| Crow Creek Sioux Tribe (Crow Creek Reservation, South Dakota) | 41,000 |
| Gila River Indian Community (Gila River Indian Reservation, Arizona | 43,000 |
| Hopi Tribe of Arizona | 45,000 |
| Mississippi Band of Choctaw (Choctaw Reservation, Mississippi) | 40,000 |
| Nez Perce Tribe of Idaho | 50,000 |
| Oglala Sioux Tribe (Pine Ridge Reservation, South Dakota) | 60,000 |
| Pueblo of Santa Clara, New Mexico | 30,000 |
| South Puget Sound Intertribal Agency, Washington | 55,000 |

OVC also announced in the **Federal Register** the availability of $600,000 for the second year of funding under the CJA Discretionary Grant Program for Native Americans. It is anticipated that an additional 8 to 12 grants will be made to Indian tribes to support programs to improve the investigation and prosecution of child sexual abuse cases. (See separate announcement at 55 FR 21799, May 29, 1990.

It should be noted that this grant competition is a follow-up to the OVC announcement in the **Federal Register**, 54 FR 31744, August 1, 1989. Under that announcement, OVC requested applications from public or private agencies, organizations, or consortia thereof to provide comprehensive training and technical assistance to Indian tribes who had received a grant from either the CJA grant program for Native American Indian Tribes, or a subgrant from either of two Assistance to Victims of Federal Crime in Indian Country discretionary grant programs.

The range of expertise required of applicant organizations was very comprehensive but only a few applications were received by OVC. A review of the applications indicated that no one proposal adequately responded to both the victim assistance and CJA training and technical assistance activities outlined in that **Federal Register** notice. Therefore, in order to better serve the interests of the program, OVC divided the training and technical assistance program into two separate grant award programs: one to provide training and technical assistance to the Native American organizations receiving a victim assistance grant, and one to provide training and technical assistance to Tribes receiving a CJA grant.

On March 13, 1990, a grant was awarded to Three Feathers Associates, the highest ranking applicant who responded to the August 1989, **Federal Register** notice. Under this grant, Three Feathers Associates will provide training and technical assistance to Native American Indian tribes and organizations that receive a subgrant under the "Assistance to Victims of Federal Crime in Indian Country" discretionary grant program.

**Purpose**

OVC seeks to ensure that all tribal programs that have received a CJA grant are provided the training and technical assistance necessary to implement their programs successfully. Therefore, $150,000 is being made available to a public or private nonprofit agency, or consortium of agencies, to provide technical assistance and training to those Indian tribes that received a discretionary grant made as part of CJA Discretionary Grant Program for Native Americans.

OVC will award a single $150,000 grant for the purposes of providing on-site individualized training and technical assistance, and a 3- to 4-day training session that will include all CJA grantees (listed above and those to be awarded in the near future—approximately 22 programs, or 45 individuals) at a location central to the majority of the grantees.

**Program Description**

OVC recognizes the difficulties inherent in the development of new programs and has concluded that technical support is critical for programs to achieve their stated goals and objectives. Several approaches to providing technical assistance and training are needed for the CJA programs because of the uniqueness of each program. Tribal program variations include: Size, location, availability of resources and services, culture, legal structure and law enforcement jurisdiction. Child sexual abuse cases may be investigated by state police, tribal police, BIA criminal investigators, the FBI or others. Cases may be prosecuted in Federal, state, tribal, or a combination of courts. Formal protocols may or may not exist between agencies.

To be able to plan a training and technical assistance strategy adequately, the grantee will be expected to review current grant applications and survey all CJA Indian grantees to assess their training and technical assistance needs within 45 days of the grant award. This survey may be done telephonically or by other appropriate means.

Within 60 days of the grant award, the grantee will be expected to categorize and establish priorities for the training and technical assistance requested, and submit to OVC a comprehensive "training plan" for the development and delivery of technical assistance and training. The plan should be based upon information collected during the survey phase of the project and should include such information as: The types of technical assistance to be provided; the steps necessary to adapt suitable resources; the location for providing the assistance; anticipated attendance at training; the reason such training/technical assistance was selected; the cost of such training; the method to be used to assess the effectiveness of such training; the period during which the training/technical assistance is to be provided; and a plan for responding to follow-up training and technical assistance requests.

The "training plan" is subject to review and approval by OVC. If the initial plan is rejected, the grantee will have 15 days from the receipt of OVC's notice of rejection and comments to submit a revised plan which will also be subject to OVC's review and approval. Within 15 days of OVC's final approval of the plan, the grantee should begin to provide on-site training and technical assistance.

OVC recognizes that the requests for training and technical assistance may exceed the availability of resources. Therefore, it is very important that the grantee develop a delivery plan which maximizes available resources. CJA grantees have been required to become members of a consortium of program providers to share project information. Each grantee has included in their budget funds for two consortium meetings. Applicants for this award can assume that CJA grantees have the funds for travel, lodging and per diem expenses for one training session. The cost of the training will be paid by this project.

This project will operate for 12 months. OVC anticipates that a majority of the training and technical assistance efforts will take place during the first 8 months of the grant.

**Selection Criteria**

In determining which applications to fund, OVC will consider the following:

1. Evidence of an indepth knowledge of the subject matter (multidisciplinary child sexual abuse, investigation, prosecution, and treatment) and current issues in Native American service delivery. (20 points)

2. Evidence of proven ability to provide high quality training results and experience in conducting training for multidisciplinary teams of law enforcement, legal, health, mental health, social services and victim assistance staff responsible for handling child sexual abuse cases. (15 points)

3. Evidence of an understanding of the jurisdictional issues involved in law enforcement and criminal prosecution of child sexual abuse cases. Copies of training materials and/or descriptions of activities could be used which are designed to assist grantees improve current practices and procedures for handling child abuse cases such as model protocols and tribal codes. (20 points)

4. A detailed budget which demonstrates the cost-effectiveness of the project including the use of available resources, and which indicates the time commitments of the key staff of the project. (20 points)

5. Proposed training curriculum that includes a multidisciplinary response to child sexual abuse cases and technical supplements for law enforcement, social service, medical, and judicial personnel. (25 points)

**Eligible Applicants**

Public or private agencies, organizations or consortia thereof, are eligible to apply. Applicants must

demonstrate knowledge of the subject matter and have expertise and experience in providing technical assistance and training on the multidisciplinary response to child sexual abuse. In the selection process, preference will be given to organizations which have staff members who are experienced in working with Native American organizations and who have expertise in child sexual abuse and related issues.

**Grant Period and Award Amount**

One grant award, not to exceed $150,000, will be made by OVC. The grant will be for a 12-month period. The applicant will not be required to provide matching funds for this program.

**Application Deadline**

All applications must be received by the close of business (5 p.m. Eastern Daylight Time) August 7, 1990, at the Office for Victims of Crime, Federal Crime Victims Division, 633 Indiana Avenue, NW., Washington, DC 20531.

**Applications**

Applicants should submit an original and two (2) copies of their completed proposal by the deadline date established above. All submissions must contain the following items in the order listed:

1. A completed and signed Federal Assistance application on the current Standard Form 424, (Revision 1988), including the Certified Assurances.
2. OJP Form 4061/3 (Certification Regarding Drug-Free Work Place Requirements).
3. OJP Form 4061/2 (Certification Regarding Debarment, Suspension, and Other Responsibility Matters).
4. An abstract of the full proposal, not to exceed one page.
5. A program narrative of not more than twenty (20) doublespaced typed pages which includes the following:
   a. A clear statement which describes the approach and strategy to be utilized to complete the tasks identified in the program description;
   b. A clear statement of the proposed goals and objectives, including a listing of the major events, activities, products and timetable for completion;
   c. The proposed management and staffing plan;
   d. A description of the proposed training curriculum, with topics listed;
   e. A description of how the project will be evaluated.
6. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted item cost. Any anticipated subcontracts must include a separate budget. If an approved indirect cost rate is used in the budget, a copy of the approval should accompany the budget narrative.
7. Copies of vitae for the professional staff and trainers.
8. Detailed technical materials that support or supplement the description of the proposed effort should be included in the appendix as examples of training materials applicant may use or has already developed.
9. In order to facilitate handling, please do not use covers, binders, or tabs.

Application forms may be obtained by writing or telephoning: Federal Crime Victims Division, Office for Victims of Crime, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 514-6444).

Approved:

**Jane Nady Burnley,**

*Director, Office for Victims of Crime.*

[FR Doc. 90-13295 Filed 6-7-90; 8:45 am]

BILLING CODE 4410-18-M

## DEPARTMENT OF LABOR

### Employment Standards Administration Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

**Withdrawn General Wage Determination Decision**

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice

General Wage Determination No. FL90-13 dated January 5, 1990.

Agencies with construction projects pending to which this wage decision would have been applicable should utilize the project determination procedure by submitting a SF-308. See Regulations part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), the incorporation of the withdrawal decision in contract specifications, when the opening of bids is within ten (10) days of this notice, need not be affected.

**Modifications to General Wage Determination Decisions**

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Connecticut,
CT90-1(Jan. 5, 1990)..... p.63, pp.64, 70.
Florida,
FL90-4(Jan. 5, 1990)..... .p.111, pp.112-113.
Maryland:
MD90-2(Jan. 5, 1990)..... p.449, p.450.
MD90-14(Jan. 5, 1990)... p. 479, p.480.
MD90-15(Jan. 5, 1990)... p.481, p.482.

*Volume II*

Indiana:
IN90-1(Jan. 5, 1990)..... p.233, pp.234-235, 237.
IN90-2(Jan. 5, 1990)..... p.249, pp.251-253, pp.261-264.
IN90-3(Jan. 5, 1990)..... p.267, pp.268, 270, pp. 275-276.
IN90-4(Jan. 5, 1990)..... p.279. pp.280-281.
IN90-5(Jan. 5, 1990)..... p.293, pp. 294-296.
Missouri:
MO90-1(Jan. 5, 1990).... p.627, pp.629.
New Mexico:
NM90-1(Jan. 5, 1990).... p.747, pp.748-751.
NM90-2(Jan. 5, 1990).... p.763, pp.764-765.
NM90-3(Jan. 5, 1990).... p.769, pp.770-771.

*Volume III*

Colorado:
CO90-1(Jan. 5, 1990)..... p.107, pp.108-109, pp.111-114.
CO90-4(Jan. 5, 1990)..... p. 125, pp.126-130.
Oregon,
OR90-1(Jan. 5, 1990)..... p.309, pp.312, 314-315, p.325.
Washington:
WA90-1(Jan. 5, 1990).... p.369, pp.371-377.
WA90-2(Jan. 5, 1990).... p.395, pp396-398.
WA90-3(Jan. 5, 1990).... p.405, p.406.
WA90-5(Jan. 5, 1990).... p.413, p.414.
WA90-6(Jan. 5, 1990).... p.417, p.418.

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 31st Day of May 1990.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 90-13082 Filed 6-7-90; 8:45 am]

BILLING CODE 4510-27-M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50-498 and 50-499]**

## Houston Lighting & Power Co., et al., South Texas Project, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-76 and NPF-80, issued to Houston Lighting & Power Company, et al., (the licensee) for the South Texas Project (STP), Units 1 and 2 located in Matagorda County, Texas.

**Environmental Assessment**

*Identification of Proposed Action*

By letter dated March 1, 1990 (ST-HL-AE-3387) the licensee proposed to change the Technical Specifications (TSs) to allow an increase in fuel enrichment (Uranium 235) to 4.5 weight percent. The present TSs permit a maximum enrichment of 3.5 weight percent. The licensee proposed no change to presently approved core average burnup of 23,740 megawatt days/metric ton (MWD/MT).

*Need for Proposed Action*

The licensee intends, in the future, to increase discharge burnups which will entail the storage and use of fuel with enrichments higher than the 3.5 weight percent currently allowed by TS 5.3.1. However, before the licensee extends plant operating cycles, it plans to receive shipments of 3.6 weight percent fuel in June 1990. Thus, the change to the TSs was requested.

*Environmental Impact of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to TSs and concludes that storage and use of optimized fuel assembly (OFA) fuel enriched with U-235 in excess of 4 weight percent and up to 4.5 weight percent at the South Texas Project, Units 1 and 2 is acceptable. The safety considerations associated with higher enrichments have been evaluated by the NRC staff and the staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse affect on the probability of any accident. There will be no changes to either authorized power or fuel burnup. As a result, there is no increase in individual or cumulative radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment and extended irradiation are discussed in the staff assessment entitled "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation." This assessment was published in the **Federal Register** on August 11, 1988 (53 FR 30355) as corrected on August 24, 1988 (53 FR 32322) in connection with the Shearon Harris Nuclear Power Plant, Unit I: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of an increase in fuel enrichment of up to 5 weight percent U-235 and irradiation limits of up to 60 Gigawatt Days per Metric Ton (GWD/MT) are either unchanged, or may in fact be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.52(c). These findings are applicable to these proposed amendments for the South Texas Project, Units 1 and 2. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes involve systems located within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on April 4, 1990 (55 FR 12613). No request for hearing or petition for leave to intervene was filed following this notice.

*Alternatives to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the South Texas Project, Units 1 and 2, dated August 1986 (NUREG–1171).

*Agencies and Persons Contacted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

## FINDING OF NO SIGNIFICANT IMPACT

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for license amendments dated March 1, 1990. Copies are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms located at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701.

Dated at Rockville, Maryland, this 5th day of June 1990.

For the Nuclear Regulatory Commission.

**Walter A. Paulson,**

*Acting Director, Project Direcorate IV–2, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.*

[FR Doc. 90–13339 Filed 6–7–90; 8:45 am]

BILLING CODE 7590-01-M

## RESOLUTION TRUST CORPORATION

### Statement of Policy on Representations and Warranties Offered in Mortgage Loan and Servicing Rights Sales

**AGENCY:** Resolution Trust Corporation ("RTC").

**ACTION:** Policy statement.

**SUMMARY:** In order to ensure the Resolution Trust Corporation's ability to dispose of its substantial volume of mortgage loans and mortgage servicing rights with as much speed and at as high prices as possible, the Resolution Trust Corporation has approved certain changes in the representations and warranties offered by the RTC in such sales.

The changes will result in these representations and warranties more closely resembling those traditionally offered in the secondary mortgage market in that they (1) will be provided directly or guaranteed by the RTC in its corporate capacity rather than by the thrift institution whose assets are being sold, and (2) will be offered to any purchaser in the marketplace rather than only to certain government sponsored enterprises and similar entities.

The representations and warranties offered in mortgage loan sales will apply to all such sales, whether executed on a whole loan or securitized basis or otherwise. Certain of such representations, mostly related to loan documentation and quality at the time of sale, will be limited to a maximum of a five year "discovery period"; compensation for any breach of a representation noted during such period will be covered for the life of the loan but only to the extent that actual losses are incurred as a result of such breach.

The representations and warranties offered in mortgage servicing sales will be provided for a five year period. In addition, protection currently being provided for expected Veterans Administration "no-bid" losses and recourse servicing by savings institutions will be backed by the RTC in its corporate capacity for a negotiated term and amount.

**EFFECTIVE DATE:** This new policy statement became effective May 31, 1990.

**ADDRESSES:** Resolution Trust Corporation, 801 17th Street NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Elisabeth N. Spector, Director, Finance and Administration Division, RTC 202/416–7558, Edward Mahaney, Assistant Director, Conservatorship Operations, RTC 202/416–7355, or Vicki Peterson, Assistant Director, Loans and Other Assets, RTC 202/416–7366.

**SUPPLEMENTARY INFORMATION:** The RTC has received comments regarding the representations and warranties offered in its sales of mortgage loans and mortgage servicing rights from numerous industry participants, including the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Mortgage Bankers Association of America, and the investment banking community.

By order of the Board of Directors, dated at Washington, DC, this 1st day of June, 1990.

Resolution Trust Corporation.

**John M. Buckley, Jr.,**

*Executive Secretary.*

[FR Doc. 90–13297 Filed 6–7–90; 8:45 am]

BILLING CODE 6714-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–28086; File No. SR-NASD-90-3]**

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Assessment of Fees Under the Code of Arbitration Procedure

The National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted on March 26, 1990,[1] and amended on May 17, 1990,[2] to the

[1] The NASD originally submitted SR–NASD–90–3 on January 17, 1990. On March 26, 1990, in response to a letter from the Commission (see letter from Catherine McGuire, Special Counsel to the Director, SEC to Frank J. Wilson, Executive Vice President, NASD, dated March 8, 1990) it submitted a replacement filing (Amendment No. 1) which is the subject of this order.

[2] Amendment No. 2 to the proposal is technical in nature, consisting of grammatical corrections to the language of the rule. The Amendment is available for examination in the Commission's public reference room.

Securities and Exchange Commission ("SEC or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [3] and Rule 19b-4 thereunder.[4] The proposal amends part III, sections 13, 30, 43, and 44 of the NASD's Code of Abritration [5] to modify the procedures and schedules under which fees are assessed for the use of arbitration facilities.

In general, the proposed rule change is intended to discourage successive adjournments of arbitration hearings and to implement revised procedures and schedules for the assessment of fees in arbitrations brought by or against customers as well as in intraindustry arbitrations.

The NASD has found that adjournments are the single most significant cause of delays in resolving disputes and result in the lengthening of the overall processing time for arbitration cases. The revised adjournment fees in the proposal are expected to reduce delays by discouraging frivolous requests for adjournments in the arbitration process and to encourage more efficient use of this process by parties to arbitration proceedings.

The amendments to sections 13, 43, and 44 of the Arbitration Code adopt a revised administrative framework for the assessment of fees based on the establishment of a non-refundable filing fee plus forum fees assessable based on the number of hearing sessions held, in amounts varying in accordance with the amount of money in dispute. The non-refundable filing fee, which is intended to recoup certain fixed administrative costs related to each filing, is distinguishable from the hearing session deposit, which is intended to relate to hearing costs, not the administrative costs relating to the processing of filings. These filing fees, which are analogous to court filing fees, are intended to offset some of the NASD's costs of administration, at least to a limited degree, even when cases settle prior to hearing.

Notice of the proposed rule change together with the terms of substance of the proposal was provided by the issuance of a Commission release (Securities Exchange Act Release No. 27900, April 12, 1990) and by publication in the **Federal Register** (55 FR 15048, April 20, 1990). No comments were received with respect to the proposed rule change.

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 section 15A [6] and the rules and regulations thereunder; specifically section 15A(b)(5) of the Act which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Association operates or controls.

*It is Therefore Ordered,* Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved for all claims filed with the NASD on or after June 18, 1990. The new fee and deposit schedules will not be applied to cases currently in process where a notice of prehearing conference or a notice of hearing has been or will have been sent to the parties prior to the effective date of the filing. The new deposit schedules will be applied in all cases where a notice of prehearing conference or notice of hearing is issued on or after the effective date of the filing. The NASD further intends to apply the provisions of new sections 43(f) and 44(f) to all applicable cases whether currently pending or newly filed.[7]

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[8]

Dated: June 1, 1990.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 90-13282 Filed 6-7-90; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-28060; File No. SR-NSCC-90-07]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 30, 1990, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (SR-NSCC-90-07) as described in Items I and II below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change clarifies that the term "expiration date" when used in connection with Balance Order liability notices, includes protect periods, if any.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) The purpose of the rule change is to clarify Balance Order procedures with respect to liability notices. The current procedure provides that liability notices are to be delivered by the time specified by NSCC on the business day preceding the "expiration date." The rule does not specifically indicate that the term "expiration date" includes protect periods. The rule change clarifies that the term does include the protect period, if any.

(2) Since the proposed rule change is concerned solely with an interpretation of an existing rule, it is consistent with the Act and the rules and regulations thereunder applicable to NSCC.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

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[3] 15 U.S.C. section 78s(b)(1) (1982).

[4] 17 CFR 240.19b-4 (1989).

[5] *NASD Manual*, paragraphs 3712 *et. seq.*

[6] 15 U.S.C. 78o-3 (1982).

[7] *See* letter of T. Grant Callery, Vice President and Deputy General Counsel, NASD to Katherine England, Branch Chief, Division of Market Regulation, SEC dated May 25, 1990. (Amendment No. 3)

[8] 17 CFR 200.30-3(a)(12).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act because it effects a change in an existing service of a registered clearing agency that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (B) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service, and has set forth the basis on which such designation is made. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-90-07 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 (17 CFR 200.3(a)(12)).

Dated: May 29, 1990.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-13279 Filed 6-7-90; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. 34-28085; File No. SR-NSCC-89-18]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Amending NSCC's Fee Structure

June 1, 1990.

On November 30, 1989, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR-NSCC-89-18) with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposal would modify NSCC's general fee schedule. Notice of the proposal was published in the **Federal Register** on December 15, 1989.[2] The proposed fee schedule has been in effect on a temporary basis since January 1, 1990.[3] No comments were received by the Commission. This order approves the proposal on a permanent basis.

### I. Description of the Proposal

The proposed rule change redesigns NSCC's fee structure and is more fully described in the Commission's prior releases regarding these fees. The fee schedule contains over 100 separate fee revisions, many of which would constitute increases to existing fees for: (1) Trade comparison, recordation, and correction; (2) trade clearance; and (3) physical delivery and collection services. The proposal would consolidate numerous charges for securities pick-up and delivery into fewer, though generally higher, fees. It also would increase fees applicable to its Direct Clearing Service, a labor-intensive service performed on behalf of non-New York based participants.

NSCC's proposal would create several new fees, including: (1) A $0.35 fee per item per day for fails to deliver Continuous Net Settlement ("CNS") short positions, which NSCC states would cover its expenses in maintaining and surveilling open fail positions; (2) a $0.03 per side netting fee; and (3) fees of $7.00 per envelope for the Funds Only Settlement Service and $3.50 for the Dividend Delivery Service.[4] Also, NSCC states in its filing that the proposal is designed to raise additional revenue to pay for NSCC's development of full back-up facilities.

### II. Rationale

NSCC stated in its filing that its revenue sources have declined due to decreasing use by its participants of traditional NSCC services involving: (1) The processing of physical certificates and various related procedures, services that have been declining due to the industry's growing use of certificate immobilization; and (2) trade comparison and correction functions, services that have been declining due to the industry's growing use of systematized trades and other automated procedures. NSCC notes that as recently as 1982 (when NSCC last had an overall review of its fees), 98% of its revenues came from these traditional functions. This proposal attempts to establish a reasonable revenue base for NSCC by reallocating fee revenues based on NSCC's current processing activities which, in terms of share volume, have increased 300% during the past decade but which, in NSCC's view, have not been carrying their reasonable allocation of developmental, operating, or overhead costs.

NSCC further states that this proposal provides for the equitable allocation of reasonable fees among NSCC participants and among other persons using NSCC's services and that, therefore, the proposal is consistent with the Act, particularly section 17A of the Act.

### III. Discussion

Section 17A(b)(3)(D) of the Act states that the rules of a clearing agency must provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. In this regard, the Commission believes that NSCC has attempted to adjust its proposed fee schedule to recognize that its service mix has changed substantially over the past decade and that, as a consequence, NSCC's charges must be reallocated.

The Commission has concluded that the proposed increases, consolidations, and new fees generally demonstrate an effort by NSCC to match revenues with identifiable expenses. Moreover, the fee schedule mirrors the effects of changing business practices, such as the increased use of automation and the decreasing role of physical certificates. In this regard, NSCC's fee increases for physical delivery services provide reasonable charges for infrequent services that require expensive labor-intensive procedures. The Commission

[1] 15 U.S.C. 78s(b)(1).

[2] See Securities Exchange Act Release No. 27524 (December 8, 1989), 54 FR 51521.

[3] See, Securities Exchange Act Release Nos. 27632 (January 17, 1990), 55 FR 2568; and 28024 (May 17, 1990), 55 FR 21472.

[4] See letter from Alison N. Hoffman, Associate Counsel, NSCC, to Thomas C. Etter, Attorney, Branch of Clearing Agency Regulation, Division of Market Regulation, SEC, dated April 26, 1990.

believes that such higher user fees reflect the high costs of inefficient, manual operations together with the high degree of administrative overhead that must be allocated to such operations.

The revised fees have been in effect for the last five months, and the Commission, on three occasions, has requested written comments on the new fee schedule.[5] Nevertheless, the Commission has not received any comments concerning the proposal.[6] In addition, NSCC will continue to refund, on a pro rata basis, any resulting profits to its participants. Accordingly, the Commission believes the fees are reasonable and equitably allocated among its participants.

## IV. Conclusion

For the reasons discussed in this order, the Commission finds that NSCC's proposed fee schedule provides for the equitable allocation of reasonable fees and other charges among NSCC participants and that the proposal is consistent with the Act, particularly section 17A(b)(3)(D) of the Act.

*It is Therefore Ordered,* pursuant to section 19(b)(2) of the Act that the proposed rule change (File No. SR-NSCC-89-18) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority (17 CFR 200.30-3(a)(12)).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 90-13280 Filed 6-7-90; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-28084; File No. SR-NYSE-90-20]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Rule 113—Specialists' Public Customers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 17, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 113(b) as follows: [Additions italicized; deletions bracketed.]

Rule 113. (a) No change

(b) No order given to a specialist for the purchase or sale of a security in which he is registered as a specialist shall indicate in any way the account for which it is entered except for orders *received by the specialist by means other than any Exchange automated order routing system* for accounts in which any of the below-named persons or parties has a direct or indirect interest:

(i) The specialist himself;

(ii) any member, allied member, officer, employee or person or party active in the business of such specialist;

(iii) the spouse and children of any of the above-named persons or parties who reside in the same household as such person or party; and

(iv) any approved person of the same member organization as such specialist.

(c) No change

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Currently, NYSE Rule 113(b) provides that orders for specified individuals associated with a specialist, and orders for approved persons (*i.e.*, entities in a control relationship with a specialist) must be identified when they are left with the specialist. This order identification requirement facilitates specialist compliance with the provisions of NYSE Rule 92, which prohibits a member from trading for his own account, or executing an order that he *knows* is for the account of an affiliated individual or entity while he holds any other order capable of execution at the same price or a better price. NYSE Rule 92, therefore, is intended to ensure that a member does not give preferential treatment to an order for an affiliate.

NYSE Rule 113(b), by requiring order identification, ensures that the specialist has the knowledge referred to in NYSE Rule 92. The purpose of the proposed rule change is to delete the order identification requirement contained in NYSE Rule 113(b) for orders in a specialty stock received by the specialist from an affiliate if received by the specialist by means of an Exchange automated order routing system.

Currently, Exchange automated order routing systems do not allow for order identification by account type. Account type indicators are "stripped" at the Common Message Switch before an order is received by the specialist. Thus, as a practical matter, it is not possible, because of system constraints, for affiliates of a specialist to comply with the order identification requirement of NYSE Rule 113(b).

The Exchange estimates that a significant expenditure would need to be incurred in order to make the necessary system enhancements required to allow the identification of affiliated orders. The Exchange believes that such an expenditure does not appear cost-justified when weighed against the overall purposes of NYSE Rule 113(b) and Rule 92. Because there are no account type indicators on systematized orders, the specialist cannot know that a systematized order is a proprietary order for the account of an affiliate. Thus, there is no possibility that the specialist could give preferential treatment to that order ahead of other orders in violation of Rule 92. Therefore, the Exchange believes it is appropriate to amend NYSE Rule 113(b) so that the order identification requirement would not apply to Proprietary orders received by a Specialist from an affiliate by means of the Exchange's automated order routing systems.

The basis under the Act for the proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendment to NYSE Rule 113(b) is consistent with these objectives in that it fosters use of

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[5] See, *supra*, notes 2-3.

[6] NSCC received 10 comment letters in response to an Important Notice soliciting comment on the proposed fee schedule, one comment letter in support of the proposal and nine that expressed concern with one or more of the proposed fees. In response to the comments, NSCC met with many of its participants to explain the proposed fee schedule and made several adjustments to the fee schedule.

the Exchange's efficient automated order routing systems, while not infringing upon the interests of public investors.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-90-20 and should be submitted by June 29, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 1, 1990.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 90-13283 Filed 6-7-90; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-28083; File No. SR-NYSE-90-26]

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to New Rule 326(e) and Amendments to Rules 325 and 104

Pursuant to section 19(b) (1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 785(b)(1), notice is hereby given that on May 22, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organizations; Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change establishes a new NYSE Rule 326(e) which provides for twenty-four hour written notification to the Exchange of certain transactions involving a reportable investment, loan or advance or disbursement of any asset between a member organization and any individual or entity in a control relationship with such organization. In addition, the Exchange proposes to amend NYSE Rules 325 and 104 to require twenty-four hour written notification to the Exchange of significant decreases in tentative net capital and net liquid assets, respectively.[1]

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] See Exhibit 2 to File No. SR-NYSE-90-26 for the exact language of the proposed amendments.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Exchange believes that recent developments in the brokerage community have indicated a need for intensified monitoring of (1) certain financial transactions between a member organization and any individual or entity in a control relationship with the organization, and (2) significant changes in an organization's net capital between reporting dates.

The proposed rule change, therefore, establishes a new NYSE Rule 326(e) which provides that each member or member organization doing business for its own account including a specialist organization shall, within twenty-four hours, notify the Exchange in writing whenever it (or any controlled subsidiary consolidated pursuant to appendix C of Securities Exchange Act Rule 15c3-1), directly or indirectly, makes any reportable investment, loan or advance or disbursement of any asset to any subordinated lender, or person controlling, controlled by, or under common control with said member or member organization. Such written notification shall be required when the transaction, entry or transfer will result in an unallowable asset or in a reduction in net capital as computed under Securities Exchange Act Rule 15c3-1 or under NYSE Rule 325, or in a reduction of "net liquid assets" as computed under NYSE Rule 104.20.

In addition, proposed Rule 326(e) contains exceptions to the written notification requirements for payment of expenses incurred in the ordinary course of business or for payments not exceeding 20% of excess net capital, provided financial responsibility or operational capability is not impaired. Furthermore, pursuant to proposed NYSE Rule 326(e), the Exchange may, conditionally or unconditionally, exempt any person or class of persons from the provisions of this rule where such action would not be inconsistent with the public interest or the protection of investors.

The Exchange also proposes to amend NYSE Rule 325 by instituting NYSE Rule 325(b)(2) which will require that members and member organizations provide the Exchange with written notification, within twenty-four hours, if tentative net capital, as computed under NYSE Rule 325, has declined 20% or more from the amount reported in the most recent FOCUS Report filed with the Exchange. Finally, the proposal will amend NYSE Rule 104 by adding NYSE

Rules 104.21 and 104.22 which require that each specialist notify the Exchange in writing, within twenty-four hours, whenever net liquid assets, as computed under NYSE Rule 104.20, decline 20% or more from the amount most recently reported to the Exchange.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it protects investors and the public interest by ensuring that member organizaton comply with certain prescribed minimum financial standards. In addition, the Exchange believes that the proposal is consistent with section 6(c)(3)(A) of the Act which permits a national securities exchange to condition the membership of a broker or dealer that does not meet such standards of financial responsibility as are prescribed by the rules of the Exchange.

*B. Self-Regulatory Organization Statement on Burden on Competition*

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-90-26 and should be submitted by June 29, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 1, 1990.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 90-13284 Filed 6-7-90; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-28079; File No. SR-PHLX-90-09]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Amendment of Automated Options Market System Charges

Pursuant to section 19(b)(1) of the Securities Exchange Act 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 22, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Pursuant to Rule 19b-4 of the Act, the PHLX is submitting a proposed rule change amending the Exchange's options fee schedules for the purpose of rescinding the Automated Options Market System ("AUTOM") charges. All other fees and charges on these schedules will remain the same. The text of the proposed fee change is as follows [additions are in italics, deletions are in brackets]:

**Equity Options Charges; Options Floor Transaction Fee**

$.05 per contract, for floor brokers executing transactions for their own member firms. [or for transactions executed over the AUTOM System].

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to rescind the charge imposed by the PHLX on options transactions executed via the Exchange's AUTOM System.

AUTOM is the Exchange's automated order delivery and reporting system which is designed to route member firm orders directly to the Exchange's options trading floor. The AUTOM System has been in effect on a pilot basis since April 8, 1988. It enables member firms to transmit orders from off the floor over remote communication lines directly to options specialists on the Exchange floor, thereby eliminating the need for a broker/dealer to use any floor personnel for the execution of eligible orders.

The proposed amendment deletes the imposition of the five cent per contract options floor transaction fee from orders entered into the AUTOM System. The purpose of this amendment is to encourage member organizations to utilize the AUTOM System and to become competitive with other options exchanges' automated order delivery systems.

The Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using the Exchange's facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No comments on this proposed rule change have been solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commissions Public Reference section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR-PHLX-90-09 and should be submitted by June 29, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 1, 1990.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 90-13281 Filed 6-7-90; 8:45 am]

BILLING CODE 8010-01-M

## TENNESSEE VALLEY AUTHORITY

### Privacy Act of 1974; New and Revised Routine Uses

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** New routine use for TVA-15, "LAND BETWEEN THE LAKES® Hunter Records—TVA," and TVA-30, "LAND BETWEEN THE LAKES® Mailing Lists—TVA," and revised routine use for TVA-2, "Personnel Files—TVA."

**SUMMARY:** As required by the Privacy Act, TVA gave notice (55 FR 12770-12771, April 5, 1990) of its intention to establish a new routine use for the systems of records entitled TVA-15, "LAND BETWEEN THE LAKES® Hunter Records—TVA" and TVA-30, "LAND BETWEEN THE LAKES ® Mailing Lists—TVA," and a revised routine use for the system of records entitled TVA-2, "Personnel Files—TVA." No comments were received. The new and revised routine uses are shown below. The full text of TVA-15 appears at 53 FR 10983, April 4, 1988, and 53 FR 43504-43505, October 27, 1988. The full text of TVA-30 appears at 53 FR 10990-10991, April 4, 1988, and 53 FR 43505, October 27, 1988. The full text of TVA-2 appears at 53 FR 10972-10973, April 4, 1988.

**EFFECTIVE DATE:** June 8, 1990.

**FOR FURTHER INFORMATION CONTACT:** Ronald E. Brewer, 615-751-2520.

**TVA-2**

**SYSTEM NAME:**

Personnel Files—TVA.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information related to education; qualification; work history; interests and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit information; service dates, including other Federal and military service; replies to congressional inquiries; medical data; and security investigation data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd; Executive Order 10577; Executive Order 10450; Executive Order 11478; Executive Order 11222; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103; various sections of title 5 of the United States Code related to employment by TVA.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

To TVA contractors and subcontractors engaged at TVA's direction in studies and evaluation of TVA personnel management and benefits; or the investigation of nuclear safety, reprisal, or other matters involving TVA personnel practices or policies; or the implementation of TVA personnel policies.

**TVA-15**

**SYSTEM NAME:**

Land Between The Lakes Hunter Records—TVA.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Personal identifying information, State hunting license(s) number(s), and information related to the hunts.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd; Executive Order 6161.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

To provide mailing lists to nonprofit conservation organizations, having missions related to that of LAND BETWEEN THE LAKES®, for the purpose of soliciting membership in such organizations.

**TVA-30**

**SYSTEM NAME:**

Land Between The Lakes Mailing Lists—TVA.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Personal identifying information, address, and information about their Land Between The Lakes associated interests, activities, or program participation.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd; Executive Order 6161.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

To provide mailing lists to nonprofit conservation organizations, having missions related to that of LAND BETWEEN THE LAKES®, for the

purpose of soliciting membership in such organizations.

**Louis S. Grande,**

*Vice President, Information Services.*

[FR Doc. 90-13263 Filed 6-7-90; 8:45 am]

BILLING CODE 8120-01-M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements Filed During the Week Ended June 1, 1990

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 46966.
*Date filed:* June 1, 1990.
*Parties:* Members of the International Air Transport Association.
*Subject:* Europe-Middle East Expedited Resolutions.
*Proposed Effective Date:* June 15 & July 1, 1990.

*Docket Number:* 46967.
*Date filed:* June 1, 1990.
*Parties:* Members of the International Air Transport Association.
*Subject:* USA-Europe Agreement.
*Proposed Effective Date:* July 1, 1990.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 90-13278 Filed 6-7-90; 8:45 am]

BILLING CODE 4910-62-M

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 1, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT 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.

*Docket Number:* 46962.
*Date filed:* May 30, 1990.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 27, 1990.
*Description:* Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to provide air transportation between Atlanta, Georgia, and the coterminal points of Moscow, Leningrad, and Tbilisi, U.S.S.R. via Frankfurt, Federal Republic of Germany.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 90-13277 Filed 6-7-90; 8:45 am]

BILLING CODE 4910-62-M

## Coast Guard

[CGDI 90-077]

### New York Harbor Traffic Management Advisory Committee; Meeting

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 USC App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on July 11, 1990, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions
2. Update of Marine Events
3. Update of dredging operations in New York harbor
4. Update on Vessel Traffic Service
5. Topics from the floor
6. Review of agenda topics and selection of date for next meeting

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander L. Brooks, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, Port Safety Office, building 109, Governors Island, New York, NY 10004; or by calling (212) 668-7834.

Dated: June 1, 1990.

**R.I. Rybacki,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 90-13318 Filed 6-7-90; 8:45 am]

BILLING CODE 4910-14-M

## Federal Aviation Administration

### Advisory Circular 20-136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of issuance of advisory circular.

**SUMMARY:** This notice announces the issuance of Advisory Circular (AC) 20-136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning. This AC provides guidance on how to comply with the requirements of the Federal Aviation Regulations (FAR) relating to protection of aircraft electrical systems from the effects of lightning. It describes acceptable methods of compliance with the regulations applicable to all categories of airplanes and rotorcraft.

**DATES:** Advisory Circular 20-136 was issued by the Acting Director, Aircraft Certification Service, on March 5, 1990.

**HOW TO OBTAIN COPIES:** A copy may be obtained by writing to the U.S. Department of Transportation, M-443.2, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on May 29, 1990.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 90-13303 Filed 6-7-90; 8:45 am]

BILLING CODE 4910-13-M

### Research, Engineering, and Development Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Transport Airplane Safety Subcommittee of the Federal Aviation Administration Research, Engineering, and Development Advisory Committee to be held Monday, June 25, 1990. The meeting will take place at 5:30 p.m. in

Conference Room F-352, The MITRE Corporation, 1820 Dolley Madison Blvd., McLean, Virginia 22102.

The agenda for this meeting follows:

- Airworthiness Assurance Task Force report
- Systems Review Task Force report

Attendance is open to the interested public but limited to space available. With the approval of the Subcommittee Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements or obtain information should contact Mr. William J. (Joe) Sullivan, Assistant Director, Aircraft Certification Service, AIR-3, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone 202-267-9554.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on May 31, 1990.

**Martin T. Pozesky,**

*Executive Director, Research, Engineering, and Development Advisory Committee.*

[FR Doc. 90-13302 Filed 6-7-90; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: June 4, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction, Act 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**U.S. Customs Service**

*OMB Number:* 1515-0136.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Establishment of a Manufacturing Warehouse.

*Description:* The proprietor of a bonded manufacturing warehouse must furnish the district director a list of all articles intended to be manufactured therein. The list must contain the trade name and ingredients which entered into the manufacture of the articles showing quantity of ingredients or materials that may be dutiable or taxable.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Respondents:* 3.

*Estimated Burden Hours Per Response:* 3 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 9 hours.

*Clearance Officer:* Dennis Dore (202) 535-9267, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

*OMB Reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 90-13312 Filed 6-7-90; 8:45 am]

BILLING CODE 4820-02-M

### Public Information Collection Requirements Submitted to OMB for Review

Date: June 4, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvanie Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-1005.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Low-Income Housing Credit for Federally-Assisted Buildings.

*Description:* The rule requires the taxpayer (low-income building owner) to seek a waiver in writing from the IRS concerning low-income buildings acquired during a special 10-year period in order to avert a claim against a Federal mortgage insurance fund.

*Respondents:* Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies, Non-profit institutions, Small businesses or organizations.

*Estimated Number of Responses:* 1,000.

*Estimated Burden Hours Per Respondent:* 3 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 3,000 hours.

*OMB Number:* 1545-1011.

*Form Number:* IRS Notice 87-61.

*Type of Review:* Extension.

*Title:* Long-Term Contract, Methods of Accounting Under Tax Reform.

*Description:* These reporting requirements are necessary to permit taxpayers to change their methods of accounting for long-term contracts to comply with section 460 of the Code.

*Respondents:* Businesses or other for-profit, Small businesses or organizations.

*Estimated Number of Responses:* 5,000.

*Estimated Burden Hours Per Respondent:* 5 hours.

*Frequency of Response:* Other (Form the first taxable year the taxpayer changes its methods).

*Estimated Total Reporting Burden:* 25,000 hours.

*Clearance Officer:* Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

*OMB Reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 90-13313 Filed 6-7-90; 8:45 am]

BILLING CODE 4830-01-M

### Public Information Collection Requirements Submitted to OMB for Review

June 4, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

**Departmental Offices**

*OMB Number:* 1505-0001.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Treasury International Capital Form S, "Purchases and Sales of Long-Term Securities by Foreigners".

*Description:* This form is filed by banks, other depository institutions, brokers, dealers, and other firms or intermediaries in the U.S., who deal directly with foreign residents (or their nominees) in transacting foreigners' purchases and sales of long-term U.S. or foreign securities.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Respondents:* 250.

*Estimated Burden Hours Per Response:* 5 hours.

*Frequency of Response:* Monthly.

*Estimated Total Reporting Burden:* 15,000 hours.

*Clearance Officer:* Dale A. Morgan (202) 566-2693, Departmental Offices, room 3171, Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220

*OMB Reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 90-13314 Filed 6-7-90; 8:45 am]

BILLING CODE 4810-25-M

## Customs Service

[T.D. 90-47]

### Cancellation With Prejudice of Individual Broker License No. 5913; Leonard J. Baldassano

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** Notice is hereby given that on March 26, 1987, pursuant to § 111.51 of the Customs Regulations, Mr. Leonard J. Baldassano surrendered his Customs broker license (no. 5913) to be cancelled with prejudice.

Dated: June 4, 1990.

**Victor G. Weeren,**

*Director, Office of Trade Operations.*

[FR Doc. 90-13327 Filed 6-7-90; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 90-48]

### Revocation of Corporate Customs Broker License Issued to D.A.T.E. International, Inc., Baltimore, MD

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** Notice is hereby given that the corporate Customs broker license no. 11455, issued to D.A.T.E. International, Inc., Baltimore, Maryland has been revoked by operation of law pursuant to section 641(b)(5), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(5)), for failure to have for a continuous period of 120 days at least 1 validly licensed officer of the corporation. Such revocation was effective April 21, 1990.

Dated: June 4, 1990.

**Victor G. Weeren,**

*Director, Office of Trade Operations.*

[FR Doc. 90-13322 Filed 6-7-90; 8:45 am]

BILLING CODE 4820-02-M

## Fiscal Service

[Dept. Circ. 570, 1989—Rev., Supp. No. 25]

### Surety Companies Acceptable on Federal Bonds; Termination of Authority; General Casualty Co. of Wisconsin

Notice is hereby given that the Certificate of Authority issued by the Treasury to General Casualty Company of Wisconsin under the United States Code, title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 54 FR 27810, June 30, 1989. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570 to reflect the change.

With respect to any bonds currently in force with General Casualty Company of Wisconsin, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: June 4, 1990.

**Mitchell A. Levine,**

*Assistant Commissioner, Comptroller, Financial Management Service.*

[FR Doc. 90-13298 Filed 6-7-90; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1989—Rev., Supp. No. 24]

### Surety Companies Acceptable on Federal Bonds; Termination of Authority; Integrity Mutual Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Integrity Mutual Insurance Company, under the United States Code, title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 1990.

The Company was last listed as an acceptable surety on Federal bonds at 54 FR 27814, June 30, 1989.

With respect to any bonds currently in force with Integrity Mutual Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3918.

Dated: June 30, 1990.

**Mitchell A. Levine,**

*Assistant Commissioner, Comptroller, Financial Management Service.*

[FR Doc. 90-13299 Filed 6-7-90; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1989—Rev., Supp. No. 27]

### Surety Companies Acceptable on Federal Bonds; Termination of Authority; the Mercantile and General Reinsurance Co. of America

Notice is hereby given that the Certificate of Authoirty issued by the Teasuery to the Mercantile and General Reinsurance Company of America, under the United States Code, title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 54 FR 27815, June 30,1989.

With respect to any bonds currently in force with the Mercantile and General Reinsurance Company of America, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: June 4, 1990.

**Mitchell A. Levine,**

*Assistant Commissioner, Comptoller, Financial Management Service.*

[FR Doc. 90-13300 Filed 6-7-90; 8:45 am]

BILLING CODE 4810-35-M

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**[Dept. Circ. 570, 1989—Rev., Supp. No. 26]**

## Surety Companies Acceptable on Federal Bonds; Termination of Authority; Regent Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Regent Insurance Company under the United States Code, title 31, sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 54 FR 27821, June 30, 1989. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570 to reflect the change.

With respect to any bonds currently in force with Regent Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: June 4, 1990.

**Mitchell A. Levine,**

*Assistant Commissioner, Comptroller, Financial Management Service.*

[FR Doc. 90-13301 Filed 6-7-90; 8:45 am]

BILLING CODE 4810-35-M

# Sunshine Act Meetings

Federal Register
Vol. 55, No. 111
Friday, June 8, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, June 12, 1990, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Notice of establishment of the Freedom of Information Act and Privacy Act Request System, which system of records relates to files maintained on individuals who have filed requests for records under the Freedom of Information Act and/or the Privacy Act of 1974.

Discussion Agenda:

Memorandum and resolution re: Final amendments to Part 337 of the Corporation's rules and regulations, entitled "Unsafe and Unsound Banking Practices," which prohibit the acceptance or renewal of brokered deposits by any undercapitalized insured depository institution after December 7, 1989, except on specific application to and waiver of the prohibition by the Corporation.

Memorandum and resolution re: Revised Delegations of Authority for the Division of Liquidation.

Memorandum re: Strategic Plans and Objectives for the Division of FSLIC Operations.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 — 17th Street N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: June 5, 1990.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 90-13376 Filed 6-5-90; 5:11 pm]

BILLING CODE 6714-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on June 13, 1990, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a number of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendation with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

**Note.**—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Reports of the Office of Inspector General:

Audit Report re:
Standard Federal Savings and Loan Association, Troy, Michigan; Assistance Agreement, Case Number: C-105c (Memo dated May 9, 1990)

Audit Report re:
Sun Country Savings Bank of New Mexico, F.S.B., Albuquerque, New Mexico; Assistance Agreement, Case Number: C-161c (Memo dated May 9, 1990)

Audit Report re:
Inventory Closing Procedures, San Jose Consolidated Office (Memo dated April 23, 1990)

Audit Report re:
Liberty National Bank, Dallas, Texas (4023) (Memo dated May 10, 1990)

Audit Report re:
Forestwood National Bank of Dallas, Dallas, Texas (5979) (Memo dated May 14, 1990)

Audit Report re:
Orlando Consolidated Office, Cost Center—504 (Memo dated May 10, 1990)

Audit Report re:
Bank of Imboden, Imboden, Arkansas; Assistant Agreement (Memo dated April 18, 1990)

Audit Report re:
Citizens Bank of Tulsa, Tulsa, Oklahoma; Assistance Agreement (Memo dated April 19, 1990)

Audit Report re:
EDP Audit of Irvine Consolidated Office, Cost Center 601 (Memo dated April 25, 1990)

Audit Report re:
EDP Audit of San Jose Consolidated Office, Cost Center 604 (Memo dated May 9, 1990)

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters realting to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street N.W., Washington, D.,C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive

Secretary of the Corporation, at (202) 898-3813.

Dated: June 5, 1990.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 90-13377 Filed 6-5-90; 5:11 pm]

BILLING CODE 6714-01-M

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**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Wednesday, June 13, 1990.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 5, 1990.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 90-13399 Filed 6-6-90; 9:54 am]

BILLING CODE 6210-01-M

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**INTER-AMERICAN FOUNDATION BOARD MEETING**

**TIME AND DATE:** June 18, 1990, 6:00-9:30 p.m.

**PLACE:** 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209

**STATUS:** Open except for the portion specified as closed session as provided in 22 CFR Part 1004.4

**MATTERS TO BE CONSIDERED:**

1. Swearing-in of Frank Yturria and Norton Stevens by Acting Chairman, Harold Phillips
2. Chairman's Report
3. President's Report
4. Approval of Minutes
5. New Business
   a. Discussion and Adoption of Revisions to By-Laws
   b. Discussion and Adoption of Resolution Limiting President's Term to Five Years With an Option to Extend for Two Years Subject to Board Approval
   c. Discussion of Foundation Initiatives in Haiti, Nicaragua, and Panama
   d. Discussion of Future Policies for Fellowship Program
   e. Discussion of Procedures to Search for Next President and Retention of Executive Search Firm. Closed Session as provided in 22 CFR Part 1004.4.

**CONTACT PERSON FOR MORE INFORMATION:** Charles M. Berk, Secretary to the Board of Directors, (703) 841-3812.

Dated: June 6, 1990.

**Charles M. Berk,**

*Sunshine Act Officer.*

[FR Doc. 90-13458 Filed 6-6-90; 4:02 pm]

BILLING CODE 7025-01-M

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**INTERSTATE COMMERCE COMMISSION**

**TIME AND DATE:** 11 a.m.; Tuesday, June 5, 1990.

**PLACE:** Room 4225, Interstate Commerce Commission, 12th Street & Constitution Avenue NW., Washington, DC 20423.

**STATUS:** Closed Conference on Short Notice.

The Commission voted and held a closed conference on short notice to discuss matters relating to the bankruptcy filing by Greyhound Lines, Inc. The meeting was closed pursuant to 5 U.S.C. 552(b)(c) (9) and (10) and 49 C.F.R. 1012.7(d) (9) and (11). The Chairman and all Commissioners except Vice Chairman Phillips voted and attended the meeting. The following staff were also present at the meeting:

*Commissioners' Staff*

Van Bosco
Dixie Horton
Theodore Kalick
Craig M. Keats
David M. Konschnik
Thomas Vining
Debra Weiner

*Office of General Counsel*

Henri Rush

*Officer of the Secretary*

Noreta R. McGee

*Office of Compliance and Consumer Assistance*

Bernard Gaillard
William Love
Sidney Strickland
Heber Hardy
Alice Ramsey

*Bureau of Accounts*

Edward J. Guthrie
Sidney Horowitz

**CONTACT PERSON FOR MORE INFORMATION:** A. Dennis Watson, Office of Government And Public Affairs, Telephone (202) 275-7252.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 90-13430 Filed 6-6-90; 12:06 pm]

BILLING CODE 7035-01-M

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**LEGAL SERVICES CORPORATION**

Presidential Search Committee; Notice

**TIME AND DATE:** A meeting of the Presidential Search Committee will be held on June 16-17, 1990. On both days the meeting will commence at 9:00 a.m.

**PLACE:** Washington Marriott Hotel, Dupont Salon G, 1221 22nd Street NW., Washington, DC 20037, (202) 872-1500.

**STATUS OF MEETING:** Open [A portion of the meeting has been closed subject to the recorded vote of a majority of the Board of Directors to discuss matters related to Presidential Search as authorized under The Government in the Sunshine Act [5 U.S.C. 552b (c) (2), (6), and (9)(B) and 45 CFR 1622.5 (a), (e), and (g)] ].

**MATTERS TO BE CONSIDERED:**

1. Approval of Agenda.
2. Approval of Minutes.
   —May 20, 1990
   —June 4, 1990
   —June 11, 1990
3. Review of Presidential Questionnaires.
4. Review of Procedures Relating to the Presidential Search.
5. Interviews of Candidates by the Committee.
6. Selection of Candidates to be Recommended for Interview by the Board of Directors.

**CONTACT PERSON FOR MORE INFORMATION:** Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: June 6, 1990.

**Maureen R. Bozell,**

*Corporation Secretary.*

[FR Doc. 90-13459 Filed 6-6-90; 4:02 pm]

BILLING CODE 7050-01-M

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**NATIONAL SCIENCE BOARD**

**DATE AND TIME:**

June 14, 1990—8:30 a.m. Open Session
June 15, 1990—8:00 a.m. Closed Session
June 15, 1990—9:00 a.m. Open Session
June 15, 1990—11:00 a.m. Closed Session

**PLACE:** National Science Foundation, 1800 G Street NW., Room 540, Washington, DC 20550.

**STATUS:** Most of this meeting will be open to the public. Part of this meeting will be closed to the public.

**MATTERS TO BE CONSIDERED JUNE 14:**

**Thursday, June 14, 1990**

*Open Session (8:30 a.m. to 5:30 p.m.)*

(Includes lunch break from approximately 12:00 noon to 1:00 p.m.)

1. Introduction
   —Purpose of Meeting
   —Overview
2. Mission—NSF in the Next Decade
   —Mission and Capabilities
   —Outlook
3. Education and Human Resources

—Traineeships
—Education and Research
—NSF Leadership
—NSF Structure
4. Research and Technology
—Balance and Continuity
—Priority Setting
—Engineering and Technology

**Friday, June 15, 1990**

*Closed Session (8:00 a.m. to 9:00 a.m.)*

5. Minutes—May 1990 Meeting
6. NSB Nominees

**Friday, June 15, 1990**

*Open Session (9:00 a.m. to 11:00 a.m.)*

7. President's Agenda and Crosscuts
—Environment
—International Research
—High Performance Computing/Networking
—Materials
8. 1992 Budget Discussion
—Status of FY 91
—Summary of NSB Conclusions

**Friday June 15, 1990**

*Closed Session (11:00 a.m. to 12:00 noon)*

9. FY 1992 Budget Preparation

**Thomas Ubois,**

*Executive Officer.*

[FR Doc. 90-13452 Filed 6-6-90; 2:09 pm]

BILLING CODE 7555-01-M

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**PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION**

Board of Directors Meeting

**AGENCY:** Pennsylvania Avenue Development Corporation.

**ACTION:** The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

**DATES:** The meeting will be held Wednesday, June 20, 1990, at 10:00 a.m.

**ADDRESSES:** The meeting will be held at Pennsylvania Avenue Development Corporation, Suite 1220N, 1331 Pennsylvania Avenue, NW., Washington, DC.

**SUPPLEMENTARY INFORMATION:** This meeting is held in accordance with 36 Code of Federal Regulations part 901, and is open to the public.

Dated: June 5, 1990.

**M.J. Brodie,**

*Executive Director.*

[FR Doc. 90-13375 Filed 6-5-90; 4:47 pm]

BILLING CODE 7630-01-M

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**SECURITIES AND EXCHANGE COMMISSION**

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 11, 1990.

Open meetings will be held on Monday, June 11, 1990, at 2:00 p.m., immediately followed by a closed meeting and on Wednesday, June 13, 1990, at 9:30 a.m., in room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Monday, June 11, 1990, at 2:00 p.m., will be:

The Commission will hear oral argument on appeals by Gallagher & Co., a registered broker-dealer, Russell K. Gallagher, the firm's sole proprietor, and Laura K. Gallagher, a principal of the firm, from the decision of an administrative law judge and action by the NASD. For further information, please contact Daniel J. Savitsky at (202) 272-7400.

The subject matter of the closed meeting scheduled for Monday, June 11, 1990, following the 2:00 p.m. open, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Wednesday, June 13, 1990, at 9:30 a.m., will be:

1. Consideration of whether to propose for public comment an amendment to Rule 31a-2 under the Investment Company Act of 1940. The amendment would clarify the recordkeeping requirements for registered investment companies, particularly investment companies investing in foreign securities. For further information, please contact Rochelle G. Kauffman, at (202) 272-2038.

2. Consideration of whether to propose for public comment Rule 17f-6 under the Investment Company Act of 1940. The Rule would allow futures commission merchants to maintain custody of margin posted by registered management investment companies in connection with transactions in commodity futures contracts and related options. For further information, please contact Diane C. Blizzard at (202) 272-2048.

3. Consideration of whether to publish for comment a release proposing revisions to Rule 431 under the Securities Act regarding the use of summary prospectuses. For further information, please contact Martin P. Dunn at (202) 272-2573.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Steve Young at (202) 272-2300.

Dated: June 5, 1990.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 90-13409 Filed 6-6-90; 11:07 am]

BILLING CODE 8010-01-M

# Corrections

Federal Register
Vol. 55, No. 111
Friday, June 8, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Privacy Act of 1974; Systems of Records

*Correction*

In notice document 90-12339 beginning on page 21897, in the issue of Wednesday, May 30, 1990, make the following correction:

On page 21910, in the second column, in the boldface heading, "**Director**" should read "**Directory**".

BILLING CODE 1505-01-D

## DEPARTMENT OF EDUCATION

### Postsecondary Education; National Defense and Perkins (National Direct) Student Loan Program Directory of Low Income Schools

*Correction*

In notice document 90-12404 appearing on page 21919, in the issue of Wednesday, May 30, 1990, make the following correction:

In the first column, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### Statement of Organization, Functions, and Delegations of Authority; Substructure for the Medicaid Bureau and Other Related Changes

*Correction*

In notice document 90-8188 beginning on page 21254, in the issue of Wednesday, May 23, 1990, make the following correction:

On page 21260, in the third column, in the date line, "April 30, 1991." should read "March 30, 1990.".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR-943-00-4214-11; GPO-196; WASH-01483-D, et al.]

### Proposed Continuation of Withdrawals, Washington

*Correction*

In notice document 90-9109 beginning on page 14870, in the issue of Thursday, April 19, 1990, make the following correction:

On page 14871, in the first column, in land description number 7, in the fourth line, "Secs. 23 and 27," should read "Secs. 23 and 26,".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

[Airspace Docket No.89-AWA-13]

### Proposed Alteration of the Chicago Terminal Control Area; Illinois

*Correction*

In proposed rule document 90-7953 beginning on page 13032 in the issue of Friday, April 6, 1990, make the following corrections:

**§ 71.401 [Corrected]**

1. On page 13036, in the second column, in § 71.401(b), under "Primary Airport", insert, "Chicago O'Hare International Airport (lat. 41°58'57"N., long. 87°54'25"W.)"

2. On the same page and in the same column, in the paragraph printed directly under "Primary Airport", in the third line the longitude should read "87°54'17"W."

3. In the third column, beginning in the eighth line, the longitude should read "88°01'15"W.".

BILLING CODE 1505-01-D

federal register

Friday
June 8, 1990

Part II

# Department of Health and Human Services

## Food and Drug Administration

21 CFR Part 864

**Medical Devices; Reclassification of the Automated Differential Cell Counter Intended To Flag or Identify Specimens Containing Abnormal Cells; Final Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 864**

**[Docket No. 85-0280]**

## Medical Devices; Reclassification of the Automated Differential Cell Counter Intended To Flag or Identify Specimens Containing Abnormal Blood Cells

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a final rule to reclassify from class III (premarket approval) into class II (performance standards) the automated differential cell counter (ADCC) intended to flag or identify specimens containing abnormal blood cells.

This reclassification is based on new information regarding the device contained in a reclassification petition submitted by the Health Industry Manufacturers Association (HIMA). This action is being taken under the Medical Device Amendments of 1976. ADCC devices intended for other uses, including to count or classify abnormal cells of the blood, will remain in class III.

**EFFECTIVE DATE:** August 7, 1990.

**FOR FURTHER INFORMATION CONTACT:** Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1096.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of September 12, 1980 (45 FR 60576), FDA issued a final rule classifying the ADCC into class III (21 CFR 864.5220). The preamble to the proposal to classify the device (44 FR 52950; September 11, 1979) included the recommendation of the Hematology and Pathology Devices Panel (the Panel), regarding the classification of the device. The Panel's recommendation at that time included a summary of the reasons why the device should be subject to premarket approval and identified certain risks to health presented by the device.

In the **Federal Register** of November 20, 1985 (50 FR 48058), FDA issued a proposed rule to establish the effective date of the requirement for premarket approval for the marketed preamendments generic type of device, the ADCC. (See 21 CFR 864.3(a).) Further, FDA announced an opportunity for interested persons to request the agency to change the classification of the device based on new information.

On November 27, 1985, HIMA, Washington, DC 20005, submitted to FDA under section 515(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)) a petition to reclassify the generic type of device, ADCC, from class III into class II. Consistent with the act and the regulations, FDA referred the petition to the Panel for its recommendation on the change in classification requested by the petitioner. Subsequently, during an open meeting of the Panel on April 24, 1986, the Panel recommended that the ADCC be reclassified from class III into class II. The Panel based its recommendation on the belief that the controls of class II are sufficient to provide reasonable assurance of the safety and effectiveness of the ADCC. Accordingly, on December 15, 1986 (51 FR 44924), FDA announced in the **Federal Register** its intent to initiate a proceeding to reclassify the ADCC from class III into class II.

Thereafter, on April 5, 1989 (54 FR 13698), in a refinement of the Panel's recommendation, FDA published in the **Federal Register** a proposed rule to reclassify from class III into class II the ADCC intended to flag or identify specimens containing abnormal blood cells and continue the class III classification of the ADCC intended for other uses. Interested persons were given until June 5, 1989, to submit comments. The one comment received is discussed below.

FDA also is announcing that the agency no longer believes that it should give a high priority to establishing an effective date of the requirement for premarket approval for the ADCC intended for uses other than to flag or identify specimens containing abnormal blood cells. (See FDA's notice published on January 6, 1989 (54 FR 550), announcing the agency's priorities for initiating proceedings to require premarket approval for 31 devices.) FDA believes that no ADCC devices intended for class III uses are currently in commercial distribution. In a future issue of the **Federal Register**, FDA will withdraw its proposed rule of November 20, 1985, proposing to establish an effective date of the requirement for premarket approval of the ADCC intended for the class III uses.

### I. Comments

The agency received one letter of comment from a manufacturer. The comment agreed with the proposed reclassification of the ADCC, but raised three issues. The first issue is whether FDA is proposing to establish the National Committee for Clinical Laboratory Standards (NCCLS) Tentative Standard (H20-T) as a performance standard under 21 CFR part 861—Procedures for Performance Standards Development.

The agency is not proposing to establish the NCCLS Standard (H20-T), a tentative voluntary standard, as a performance standard under 21 CFR part 861. This NCCLS tentative voluntary standard was cited in the proposed rule to indicate that a performance standard under 21 CFR part 861 can be developed to provide reasonable assurance of the safety and effectiveness of the ADCC intended to flag or identify specimens containing abnormal blood cells.

Secondly, the comment recommends that the regulatory status of the tentative standard H20-T be clarified.

In paragraph 8 of its Policy Statement for Class II Medical Devices (October 23, 1985; 50 FR 43060), FDA described situations where FDA may recommend that manufacturers of devices use a tentative voluntary standard or an approved voluntary standard as a guideline under 21 CFR 10.90(b). Although the H20-T is a tentative voluntary standard and does not constitute legal requirements, FDA will use it as guidance when considering whether to recommend legal action against a device after an evaluation of the relevant facts. FDA believes that all manufacturers of the ADCC intended to flag or identify specimens containing abnormal cells can comply with this tentative voluntary NCCLS standard.

And lastly, FDA is asked its interpretation of "abnormal" blood cells. In this regulation, the word "abnormal" means other than normal. Medical technologists, not the ADCC, are now responsible for checking and classifying abnormal cells. An ADCC intended to classify and count abnormal cells without the aid of a trained medical technologist would be considered a class III device subject to premarket approval.

### II. FDA's Analysis and Conclusion

FDA concludes that the generic ADCC device intended to flag or identify specimens containing abnormal blood cells should be classified into class II. The agency also concludes that sufficient "new information" in the form of publicly available, valid scientific evidence exists for establishing a performance standard to provide reasonable assurance of safety and effectiveness of the device for its intended use. Additionally, FDA believes that the relationship between

the device's performance characteristics and risks for this use have been established by valid scientific evidence and that the risks do not present a potential unreasonable risk to public health.

FDA's decision is based on the Panel's recommendation and a review of the information and data contained in the administrative record referenced in the proposed rule of April 5, 1989.

Therefore, under section 513(e) of the act (21 U.S.C. 360c(e)), FDA is adopting the summary of reasons for the recommendation, the summary data upon which the recommendation was based, and the risks to health in the proposed rule published on April 5, 1989. FDA is issuing a final rule that amends § 864.5220 (21 CFR 864.5220) by revising paragraphs (b) and (c) thereby reclassifying the generic type of device, the ADCC intended to flag or identify specimens containing abnormal blood cells from class III into class II and continuing the class III classification of the ADCC intended for all other uses.

## III. Environmental Impact

The agency has determined under 21 CFR 25.24 (a)(8) and (e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## IV. Economic Impact

In a notice of intent of December 16, 1986 (51 FR 44924), FDA invited interested persons to comment on the economic impact of the reclassification of the ADCC device for certain uses from class III into class II. None of the comments received mentioned any adverse economic impact. Generally, reclassification of preamendments devices from class III into class II should not have any adverse economic impact because manufacturers are relieved of the cost of complying with the premarket approval requirements in section 515 of the act. Although there may be offsetting costs that a manufacturer of the device could incur to comply with the provisions of a performance standard under section 514 of the act (21 U.S.C. 360d), any economic impact would be the result of actions taken to comply with the standard and not the act of reclassification. The economic impact of the establishment and promulgation of a performance standard will be assessed prior to its actual proposal as part of the agency's regulatory planning process under Executive Order 12291.

After considering the economic consequences of reclassifying the device as discussed above, FDA concludes that this final rule would not be a major rule as specified in Executive Order 12291. Further, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96-354), that the final rule would not have a significant economic impact on a substantial number of small entities.

## List of Subjects in 21 CFR Part 864

Blood, Hematology and pathology devices, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 864 is amended as follows:

## PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR part 864 continues to read as follows:

**Authority:** Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 864.5220 is amended by revising paragraphs (b) and (c) to read as follows:

### § 864.5220 Automated differential cell counter.

* * * * *

(b) *Classification.* (1) Class II (performance standards) when the device is intended to flag or identify specimens containing abnormal blood cells.

(2) Class III (premarket approval) when the device is intended for other uses, including to count or classify abnormal cells of the blood.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device identified in paragraph (b)(2) of this section. See § 864.3.

Dated: May 18, 1990.

**Ronald G. Chesemore,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 90-13315 Filed 6-7-90; 8:45 am]

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# Part III

# Department of Transportation

## Research and Special Programs Administration

## 49 CFR Parts 192 and 195

## Proposals for Pipeline Safety; Disposition of Safety Proposals

**DEPARTMENT OF TRANSPORTATION**

**Research and Special Programs Administration**

**49 CFR Parts 192 and 195**

**[Docket No. PS-93, Notice 2]**

**RIN 2137-AB 27**

## Proposals for Pipeline Safety

**AGENCY:** Office of Pipeline Safety (OPS), RSPA, DOT.

**ACTION:** Disposition of safety proposals.

**SUMMARY:** This notice gives the disposition of 18 proposals for new or amended standards for the safety of gas or hazardous liquid pipelines put forth in a February 1987 advance notice of proposed rulemaking. Many of the proposals were affected by the Pipeline Safety Reauthorization Act of 1988 and are being handled in a manner consistent with that statute. A few proposals are the subject of technical studies OPS has in progress. The remaining proposals are withdrawn from further consideration because OPS has determined further rulemaking action is not justified.

**FOR FURTHER INFORMATION CONTACT:** L.M. Furrow, (202) 366-2392.

**SUPPLEMENTARY INFORMATION:** On July 8, 1986, an 8-inch electric-resistance-welded petroleum products pipeline ruptured in Mounds View, Minnesota. Gasoline vapors were ignited, and an explosion and fire killed two people. Following this accident, the National Transportation Safety Board (NTSB) conducted hearings, and OPS took enforcement action against the pipeline operator. The Governor of Minnesota formed a Commission on Pipeline Safety, which on November 20, 1986, issued a report making various pipeline safety regulatory proposals. In Congress, several bills were introduced to amend the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) and the Natural Gas Pipeline Safety Act of 1968 (NGPSA). Meanwhile, the House Energy and Commerce Committee reported its oversight findings and recommendations on pipeline safety developed earlier in the year (132 Cong. Rec. H6938).

As an aid to formulating an agency position on these various legislative and regulatory proposals, OPS published an advance notice of proposed rulemaking to seek public comment on 18 safety proposals that involved adoption of new or amended safety standards. (52 FR 4361, February 11, 1987). Over 300 responses were received as a result of the request for comments. About 30 percent of these were from Minnesota citizens, businesses, and civic groups, who expressed concern and a general desire to see changes made in the pipeline safety standards. The remainder were from pipeline operators, trade associations, governmental agencies, and others.

After issuing a report (NTSB PAR 87/02) on the Mounds View accident, the NTSB made 8 safety recommendations to OPS and DOT in separate letters dated September 9, 1987. (Recommendations P-87-20 through P-87-28). Three of these recommendations relate to proposals included in the advance notice. The pertinent recommendations are set forth below in connection with the disposition of proposals numbered 4, 6, and 16 in the advance notice.

Next, on September 23, 1987, the 18 proposals were discussed at a joint public meeting of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee. These advisory committees are organized under the NGPSA and the HLPSA to give DOT advice about the technical feasibility, reasonableness, and practicability of proposed pipeline safety standards. The summary of comments set forth below under each proposal includes the advice of the committees.

On October 31, 1988, the Pipeline Safety Reauthorization Act of 1988 (Pub. L. 100-561) (hereafter "Reauthorization Act") was enacted. Six proposals, numbered 1, 4, 5, 6, 9, and 17 in the advance notice, were affected by requirements of this statute. The disposition of these proposals is set forth below under the heading, "Reauthorization Act."

Then, in January 1989, DOT's Safety Review Task Force in the Office of the Secretary of Transportation published a report on OPS's pipeline safety program, making 23 different recommendations to improve its effectiveness. Some of these recommendations concern proposals in the advance notice. They are stated below in connection with the disposition of proposals numbered 4, 5, 6, 8, 15, and 17 in the advance notice.

The remainder of this notice gives the disposition of the 18 proposals arranged in three categories: I—Reauthorization Act (proposals affected by the Statute); II—Continuing Projects (proposals unaffected by the statute that OPS is continuing to study); and III—Proposals Withdrawn. The number in brackets immediately following the title of a proposal is the proposal's number in the advance notice.

Dispositions were made in light of public comments received, the advisory committees' views, the NTSB and Safety Task Force recommendations, and requirements of the Reauthorization Act. When a disposition indicates that future rulemaking is scheduled, the regulation identifier number (RIN) listed in DOT's Semiannual Regulatory Agenda is given in brackets. This agenda is published in the **Federal Register** in April and October each year. (See 55 FR 16420; April 23, 1990.)

### I—Reauthorization Act

1. *Proposal: Information for Local Authorities.* [1] Require operators to provide local jurisdictions, fire departments, and public safety agencies within ½ mile of pipelines, maps, inventories, and descriptions of transported substances, updated as appropriate. In addition, provide local fire departments and public safety agencies a copy of each operator's operations, maintenance, and emergency manual.

*Comments:* Most commenters, including both operators and governmental agencies, opposed this proposal, although persons in Minnesota strongly supported it, as did commenters from the surveying and mapping industry. Operators were concerned about the high costs of preparing and delivering the material and the potential that local authorities would use the information without operator assistance to locate and operate valves (possibly improperly) in an emergency. The advisory committees did not support the proposal, but praised the efforts of California, which publishes a booklet of pipeline routes and other information useful in an emergency. The committees favored letting State agencies collect and distribute emergency response information without Federal involvement.

*Disposition:* Under current regulations operators are required, as part of their emergency response planning, to maintain liaison with appropriate fire, police, and other public officials. On these occasions operators give local officials information about pipeline location, potential hazards, response plans, and other useful things the officials may request.

In addition, sections 102 and 202 of the Reauthorization Act direct DOT to establish regulations requiring operators to maintain certain information about pipelines and give it to appropriate State officials who request it. The information to be provided includes maps, a description of the pipelines and products transported, the operations and maintenance manual for the pipelines, emergency response plans, and anything

else DOT considers useful. OPS has scheduled a notice of proposed rulemaking on this subject. [RIN 2137-AB 48.]

Under the existing regulations and those to be proposed, OPS believes the objectives of the proposal will be satisfied. State officials responsible for pipeline safety should be able to obtain a uniform, minimum amount of information about all pipelines in their States, both intrastate and interstate pipelines. These officials can then, at their discretion, provide useful information to appropriate local authorities.

2. *Proposal: Shutoff Valves.* [4] Convert required shutoff valves on existing pipelines to work automatically and require new pipelines to be equipped with automatic shutoff valves or remote-control shutoff valves every 20 miles in rural areas; every 4 miles in urban areas.

*NTSB Recommendation P-87-22:* Require the installation of remotely-operated valves on pipelines that transport hazardous liquids, and base their spacing on the population at risk.

*Safety Task Force Recommendation C.4.:* Develop criteria for the use of automatic and remotely controlled valves on hazardous liquid pipelines.

*Comments:* Although numerous commenters supported the proposal on the assumption that accelerating the time for line closure would mitigate an emergency, persons familiar with the use of automatic and remote-control block valves and accident consequences held a different view. These commenters noted that such valves are now installed only where necessary to meet special operational needs. They are not installed at regular intervals because of high installation, maintenance, and operating costs, and the potential that power or pressure changes can cause the valves to become inoperative or close unintentionally, possibly causing a harmful situation. Also, remote-control or automatic valves were said to have very little effect on safety because often, especially in populated areas, ignition of the fluid released at a line break would occur before valves could be actuated or respond automatically and shutoff flow. The advisory committees supported the need for a study to determine the costs and benefits of using remotely operated valves in populated areas.

*Disposition:* Based on the information in this docket and an earlier rulemaking proceeding on closely spaced valves (Docket PS-53, 46 FR 2130), there does not appear to be sufficient justification to require the installation of remote-control or automatic shutoff valves at uniform intervals along the entire length of gas and hazardous liquid pipelines. However, as required by section 305 of the Reauthorization Act, OPS is conducting a study to determine whether automatic or remote-control valves may be needed to enhance safety in critical situations along a pipeline. Information is being collected about the safety, cost, feasibility and effectiveness of requiring the use of these valves or other emergency flow restriction devices in these situations. (See Notice 1, Docket PS-104; 54 FR 20945, May 15, 1989.) This study will be submitted to Congress as required by the Reauthorization Act. If the results provide a basis for improving pipeline safety, new rulemaking will be initiated.

3. *Proposal: Pipeline Inventory.* [5] Require operators to determine and submit (to OPS) an inventory, including specifications, of the types of pipelines in their systems.

*Safety Task Force Recommendation D.3.:* Develop regulations for maintenance of a pipeline inventory data base, as required by the Reauthorization Act, based on the results of the data-needs-and-analysis study of RSPA's Transportation Systems Center.

*Comments:* Persons who supported this proposal thought OPS should develop a complete data base to be able to recognize trends in the safety of pipe of a particular type or manufacturer or the probability of failure of that pipe. Operators objected to the idea of submitting inventory data to OPS in advance of any demonstrated need for it. They argued the information OPS currently receives through its accident and annual reports is sufficient for its regulatory purposes. Additional information, they said, could be obtained upon request because most operators keep inventory data for new pipelines, although this information may not be readily available for older ones. The advisory committees suggested the amount of inventory data to be submitted to OPS could be overwhelming and impossible to analyze, and recommended studying the data collection and handling process before taking rulemaking action.

*Disposition:* At present OPS does not have available a data base from which to determine whether pipe of a particular characteristic or manufacturing process has failed more often than any other pipe, and which operators have particular types of pipe. In Sections 102 and 202 of the Reauthorization Act, Congress seeks to fill part of this informational void by directing DOT to issue regulations requiring operators to complete and maintain a current inventory, with appropriate information such as leak history, of all types of pipe used for the transmission of gas or hazardous liquids. OPS has scheduled a notice of proposed rulemaking on this subject [RIN 2137-AB 48], and, as the Task Force recommends, will consider the results of the data-needs-and-analysis study in developing the proposed rules. In addition, OPS needs to have part of the inventory information on hand to conduct statistical analyses and set regulatory priorities on a continuing basis. To this end, OPS will include proposed annual reporting requirements in the inventory rulemaking.

4. *Proposal: Integrity Testing.* [6] Require integrity testing (by pressure tests or "smart pigs") at least every 2 or 3 years, with frequency and type of test determined case-by-case in light of population density and certain pipeline and environmental factors.

*NTSB Recommendation P-87-23:* Revise 49 CFR parts 192 and 195 to include operational based criteria for determining safe service intervals for pipelines between hydrostatic tests.

*Safety Task Force Recommendations C.2 and 3.:* Expedite the issuance of regulations mandated by the Reauthorization Act that would require new pipelines and substantial replacements of existing pipe to be constructed to accommodate pigs. In addition, establish criteria for determining when pigging of pipelines is necessary and how often and under what conditions hydrostatic testing to assess pipeline strength and integrity is necessary.

*Comments:* While commenters in Minnesota favored this proposal, others objected to testing at set intervals, primarily because they assumed a high cost to benefit ratio. Additional objections were voiced regarding the potential for accidents during and as a result of hydrostatic testing, and the lack of facilities that would be needed to handle pigs. The advisory committees saw no need for hydrostatic testing at regular intervals, and thought OPS should study the circumstances in which smart pigs should be used.

*Disposition:* Based on the information in this proceeding and a cost/benefit study prepared previously under Sec. 210 of the HLPSA, integrity testing of all pipelines at arbitrary, fixed intervals does not appear justified.

OPS believes, however, that the integrity of pipelines should be assured by appropriate testing, with the frequency and type of test determined on the basis of operational factors, such as leak history and pipeline location. In this regard, sections 108(a) and 207(a) of

the Reauthorization Act set forth various operational factors OPS must consider in determining how frequently to inspect pipelines in carrying out its enforcement responsibilities, and what type of testing operators should be required to conduct. By considering these factors on a case-by-case basis, OPS will inspect and, as appropriate, require that the integrity of pipeline facilities be tested. Testing may involve corrosion surveys, hydrostatic testing, pig runs, or other tests as the conditions warrant.

In addition, OPS has begun a study, as required by section 304 of the Reauthorization Act, of the feasibility of requiring operators to use smart pigs to test their pipelines at periodic intervals determined by applying the operational factors under sections 108(a) and 207(a). (See Notice 1, Docket PS-105; 54 FR 20948, May 15, 1989.) This study will be submitted to Congress in 1990, and if the results are positive, new rulemaking will be initiated.

Also, as required by sections 108(b) and 207(b) of the Reauthorization Act, OPS will establish regulations to require that new and replaced gas transmission lines and hazardous liquid pipelines be designed to accommodate the passage of pigs. A notice of proposed rulemaking has been scheduled on this subject. [RIN 2137-AB 71].

Since criteria to determine what intervals are appropriate for periodic hydrostatic testing would have to account for all flaw-growth mechanisms and growth rates, OPS believes the development of such criteria is beyond the current state-of-the-art. Many flaw-growth mechanisms, for example stress corrosion cracking, depend on environmental and metallurgical conditions about which operators will have little or no knowledge. In the absence of criteria, OPS and State inspectors will judge whether hydrostatic testing is needed on the basis of operational factors that indicate the level of risk a pipeline poses.

Nevertheless, OPS believes a major portion of the benefits expected from periodic hydrostatic testing of liquid pipelines are achieved when the operating pressure of a pipeline does not exceed 80 percent of its prior test or operating pressure held for 4 or more hours. This minimum safety margin is required for hazardous liquid pipelines constructed to part 195 standards and all onshore highly volatile liquid pipelines. Other hazardous liquid pipelines may have to be hydrostatically tested or have their operating pressures reduced to provide this minimum safety margin. OPS has scheduled notice of proposed rulemaking on this subject. [RIN 2137-AB 46].

5. *Proposal: Carbon Dioxide Pipelines.* [9] Include carbon dioxide ($CO_2$) pipelines in the regulation of hazardous liquid pipelines.

*Comments:* The commenters were about evenly divided on the need to regulate $CO_2$ pipelines. Those in favor of regulation gave as their reasons high operating pressures and a potential for asphyxiation. Those against argued that $CO_2$ is non-toxic, nonflammable, and inert, and that $CO_2$ pipelines are largely located in undeveloped areas. The hazardous liquid advisory committee suggested that if $CO_2$ pipelines are to be regulated, OPS should refer to voluntary standards being developed.

*Disposition:* The 100th Congress was concerned about the potential for severe hazards to which the public might be exposed by the expanding use of $CO_2$ pipelines. Therefore, section 211 of the Reauthorization Act directs DOT to issue regulations governing the safety of these lines. A notice of proposed rulemaking was published October 12, 1989 (54 FR 41912). [RIN 2137-AB 72].

6. *Proposal: Condition Report.* [15] Require submission of 4-year comprehensive reports on the condition of pipelines (corrosion, leaks, etc.). Use them as basis for remedial action, i.e., pigs, pressure tests, replacement.

*Safety Task Force Recommendation D.4.:* Require hazardous liquid pipeline operators to submit annual reports on the size and condition of their systems.

*Comments:* Most commenters said that current information collection requirements are adequate to inform OPS about the condition of pipelines. However, there were some who wanted OPS to collect more details about the results of corrosion control inspections. The advisory committees recommended that the proposal be withdrawn.

*Disposition:* Under current reporting and recordkeeping requirements, operators already provide OPS extensive information about pipelines. This information includes, among other things, corrosion inspection results, the causes of leaks, and the existence of unsafe conditions. OPS and State agencies use this information along with other relevant facts about pipeline conditions obtained from site visits to determine on a case-by-case basis the need for pipeline integrity testing, replacement, or other remedial actions. In addition, as stated above under item 3, sections 102 and 202 of the Reauthorization Act direct DOT to require pipeline operators to provide pipe inventory data, including leak history. OPS has scheduled a notice of proposed rulemaking on the data operators would have to maintain and report annually to OPS. [RIN 2137-AB 48]. OPS believes that information now being collected and inventory data to be provided under sections 102 and 202 of the Reauthorization Act should accomplish the purposes of the proposed 4-year report.

7. *Proposal: One-Call System.* [17] Require operators to create or participate in "one-call" systems.

*Safety Task Force Recommendation C.9.:* Expedite rulemaking to extend to hazardous liquid pipelines the requirement that operators participate in outside force damage prevention programs.

*Comments:* The virtues of one-call systems received general acclaim, but many commenters did not believe one-call system creation or participation should be mandatory where economic or demographic considerations make alternative damage prevention programs more appropriate. In this regard, they argued that a program of personal contacts, education, and linemarking is the most cost effective approach to preventing excavation damage in rural areas. Others objected to the proposal's focus on pipeline operators, since it is known that the success of one-call systems depends on participation by all excavators and all operators of buried utilities in an area. The advisory committees advised OPS to adopt an excavation damage prevention program rule for hazardous liquid pipelines based on the existing gas pipeline rule (§ 192.614), which allows operators the choice of participating in one-call systems or conducting similar alternative programs.

*Disposition:* Existing part 192 regulations require gas operators to conduct damage prevention programs in urban areas. One-call system participation is discretionary under these regulations because OPS believes it would not be appropriate to mandate that pipeline companies enter into an association with other utilities that are outside DOT's jurisdiction.

OPS has proposed to amend parts 192 and 195 to require operators of gas and hazardous liquid pipelines to conduct damage prevention programs for their pipelines in both urban and rural locations. [RIN 2137 AB 47]. Under the proposal, participation in available one-call systems or creation of such systems would not be required, but participation may be used to the extent possible to satisfy the program requirements. A final rule has been scheduled in this proceeding.

In a related matter, section 303 of the Reauthorization Act directs DOT to issue regulations for its State pipeline safety grant-in-aid program that would require participating States to adopt a one-call system as it relates to the notification of pipeline operators. State agencies requesting pipeline safety grant-in-aid funds in States that have not adopted or are not seeking to adopt a one-call system in accordance with DOT's regulations may not receive the full allocation of funds to which they would otherwise be entitled. OPS has scheduled a notice of proposed rulemaking on this subject. [RIN 2137 AB 66].

The Reauthorization Act lays out nine different requirements the new one-call system regulations are to include. One of these requirements is that pipeline operators must participate in an appropriate one-call system. When put into effect under State laws, this requirement will override discretionary participation under RSPA's damage prevention program rules for pipelines subject to those laws.

8. *Proposal: Design and Construction.* [18] Provide for increased federal oversight in design and construction of new pipelines, and study the need for certification of pipeline design and construction personnel.

*Comments:* Commenters generally held the view that there are no pipeline design and construction problems that demand greater governmental oversight or certification of personnel. However, Minnesota commenters were concerned about the potential for problems to occur. The advisory committees recommended that OPS concentrate its efforts on establishing qualification requirements for operation and maintenance personnel.

*Disposition:* The available pipeline safety data do not indicate that the actions contemplated by this proposal for design and construction functions are needed. However, the data show that more attention should be given to the problem of personnel competency in the areas of operations and maintenance. Under Sections 101 and 201 of the Reauthorization Act, Congress granted DOT specific authority to require that persons performing pipeline operation and maintenance functions be tested for qualifications and certified to perform such functions. Therefore, OPS has scheduled publication of a notice of proposed rulemaking as the first step in establishing federal qualification standards for pipeline operation and maintenance functions. [RIN 2137-AB38].

II—*Continuing Projects*

1. *Proposal: Rapid Leak Detection and Isolation.* [12] Require operators to improve ability to rapidly locate and isolate leaks, through remote-control valves (spaced according to population), remotely monitored gauges and meters at pump stations, and more specific emergency procedures. Establish release (leak) detection standards for hazardous liquid pipelines.

*Comments:* Some operators said that computer-based pipeline simulations could be used to detect leaks in time to prevent damages. It was noted, however, that this technology is still being developed and could cost between $5 and $10 million per pipeline. Most commenters found the existing emergency-procedure requirements adequate, although some suggested specific additions, including setting a time limit for responding to an emergency, and requiring operators to contact local officials immediately when a leak is suspected. The advisory committees recommended that OPS study the performance and effectiveness of leak detection systems being developed.

*Disposition:* OPS believes the pipeline-simulation technology for more rapid leak detection and shutdown is not sufficiently developed for general use. Operators now are required to monitor their pipelines for leaks and other indications of abnormal operations, and to take appropriate corrective action if necessary. Still, OPS is studying the capabilities of advanced leak detection methods, including those utilizing supervisory control and data acquisition systems (Project 87-10). As mentioned above under item I-2., OPS also is studying the benefits of using remote-control or automatic valves to isolate line sections when leaks are detected. Further rulemaking with respect to rapid leak detection and shutdown will be taken if these studies demonstrate that net benefits can be achieved in particular situations.

As to emergency procedures, OPS believes the existing requirements are adequate. The suggested additions to those requirements that involve specific actions might be unworkable in many cases, considering the wide variations in pipeline locations and operating conditions. OPS plans to propose new rules regarding qualification of pipeline personnel. [RIN 2137-AB 38]. These proposed rules would require that personnel be trained in matters necessary for proper execution of emergency procedures. If placed in effect, these qualification rules would improve operators' responses to notices of leaks that constitute emergencies.

2. *Proposal: Classification of Liquid Pipelines.* [13] Require siting [class location] standards for hazardous liquid pipelines similar to those in effect for gas pipelines.

*Comments:* Comments were about evenly divided on the need for more stringent liquid standards based on population density, or class location. Those opposed made a point of the different properties of liquids and gases in arguing that the gas pipeline class location standards governing operating pressure or stress level would not add to the safety of liquid lines. Those in favor of the proposal asserted that increased pipe wall thickness in more populated areas has improved the ability of pipe to withstand outside force damage, and that reducing pressure or retesting with advancing population has minimized problems due to structural weakening by corrosion or other causes. The advisory committees recommended that OPS study the benefits of imposing class location requirements on liquid lines.

*Disposition:* Part 195 now contains many safety standards that vary in stringency according to population characteristics, although a "class location" scheme is not employed. OPS is completing a study (Project 87-11) of the need to amend these regulations to establish more stringent safety standards for hazardous liquid pipelines in populated areas. Further rulemaking action on this proposal will be taken if justified by the conclusion of this study.

3. *Proposal: Maximum Operating Pressure.* [14] Require for hazardous liquid pipelines an increased safety margin between test and operating pressure depending on population or environmental factors.

*Comments:* Most commenters saw no need to increase the minimum safety margin required for hazardous liquid pipelines built to part 195 standards, based on the good safety record of these pipelines and the fact that few accidents are caused by overpressure. These commenters also argued that the cost of increasing the margin on existing lines that operate near capacity would be extremely high, since pressures would have to be reduced and new lines built to maintain original capacity. Persons who supported the proposal thought liquid lines, like gas pipelines, should have an increased safety margin as population increases, and that the resulting thicker pipe walls would provide added protection against excavation damage. The advisory committees suggested that OPS defer action pending completion of the study

to determine the need for more stringent standards for hazardous liquid pipelines in populated areas (Project 87-11).

*Disposition:* OPS has included this proposal in its study concerning the need for more stringent standards for hazardous liquid pipelines (Project 87-11). The study will investigate whether the minimum safety margin between test and operating pressure prescribed by Part 195 is adequate for the safety of hazardous liquid pipelines. The study will take into account population and environmental factors and the greater safety margins required for high pressure gas pipelines. OPS will take further rulemaking action on this proposal if justified by the conclusion of that study.

4. *Proposal: ERW Pipe:* [16] Since seam failures in electric resistance welded pipe have caused a number of accidents, a study should be conducted to learn which ERW pipe is susceptible to seam degradation.

*NTSB Recommendation P-87-26:* Obtain sufficient data on low frequency, electric resistance welded pipe and determine if its continued use presents an unreasonable hazard to public safety and take appropriate regulatory action for identified deficiencies.

*Comments:* Some commenters felt the ERW seam-failure problem is becoming less significant with time as faulty materials are gradually removed from service. Others argued that there is still an existing hazard which should be studied to reveal details that would enable operators to choose an appropriate remedy. The advisory committees recommended that OPS defer further action until it completes its analysis of ERW pipe failures.

*Disposition:* OPS has completed its analysis of ERW pipe failures ("Electric Resistance Weld Pipe Failures on Hazardous Liquid and Gas Transmission Pipelines," August 1989) and found that problems are limited to pipelines constructed before 1970. The analysis shows that failures have occurred in low frequency ERW pipe, and that selective corrosion and incomplete seam fusion were contributing factors. As a result of this finding, OPS is giving special consideration to pre-1970 ERW pipe in the notice of proposed rulemaking on hydrostatic testing discussed above under Proposal 4.

In addition, OPS is monitoring industry research into the behavior of ERW seams under various levels of cathodic protection and failure modes, and has contracted with the Oregon Graduate Center to see if ERW pipe produced by different manufacturers behaves differently when subjected to corrosion. OPS also is assessing the safety measures recommended recently by the National Institute of Standards and Technology in its report on pre-1970 ERW pipe, "An Assessment of the Performance and Reliability of Older ERW Pipelines," July 1989. A decision on whether rulemaking action other than that mentioned above is needed for pre-1970 ERW pipe is pending completion of these ongoing studies.

## III—Proposals Withdrawn

1. *Proposal: Additional Information for the Public.* [2] Require operators to provide landowners within ½ mile of pipelines written notice of each pipeline's existence, its location, and how to identify and respond to hazards. Also, establish standards for uniform public education programs.

*Comments:* Some commenters, particularly commenters in Minnesota, supported the proposal by saying people have a right to know about potential hazards to which they may be exposed. Most persons, notably pipeline operators, objected to it, however, on grounds that direct notices would create undue alarm, that landowners are not necessarily the persons at risk, and that the costs would be extremely high with little expected benefit. The advisory committees thought the proposal regarding notice to landowners should be withdrawn, and any regulatory effort should concentrate on public education.

*Disposition:* The pipeline safety standards require operators to conduct public education programs to enable people to recognize and report pipeline emergencies. These programs usually are conducted through mailings to landowners and excavators, advertisements, and television presentations. Although these educational programs have a common goal, their content has not been standardized because operators need flexibility to shape programs under varying operating conditions and locales.

Public education programs normally do not advise landowners of each pipeline's location. However, the presence of pipelines is made known through permanent line marking where required or voluntarily installed.

Also, landowners may contact either one-call notification systems, which are advertised widely, or the operators to have lines temporarily marked. In this regard, OPS has published a notice of proposed rulemaking regarding additional line marking in urban areas and wider use of damage prevention programs involving one-call systems (53 FR 24747, June 30, 1988). Landowners who have a need for additional pipeline information should be able to get it from the pipeline companies or State pipeline safety officials.

Considering the regulations now on the books and planned regarding public information about pipeline hazards and pipeline location and the additional costs and uncertain benefits of requiring operators to notify landowners directly about pipeline locations, OPS does not believe additional rulemaking is warranted. Therefore, OPS is withdrawing the proposal to require operators to directly notify landowners of pipeline location. The efficacy of existing public education programs will be monitored; and any rule changes OPS considers necessary will be proposed in a separate rulemaking proceeding.

2. *Proposal: Pipeline Markers.* [3] Require operators to post conspicuous signs at road crossings.

*Comments:* Almost all commenters supported the use of line markers at road crossings to warn excavators of the presence of buried pipelines. However, most of these commenters felt the current line marking requirements are adequate to accomplish this objective. Commenters overwhelmingly rejected the ideas of installing larger, more conspicuous signs than currently in use and placing large signs at all urban intersections without regard for esthetic considerations. The advisory committees recommended the proposal be withdrawn.

*Disposition:* In view of the existing regulations which require line markers of a sufficiently conspicuous size at road crossings (with exceptions for impractical situations in urban areas) and the growing use and success of State-wide one-call systems and similar programs in preventing excavation damage to pipelines, OPS is withdrawing the proposal.

3. *Pipeline Location.* [7]

*Proposal:* Prohibit new pipelines (other than gas distribution lines) within 150 feet of any permanently inhabited facility.

*Comments:* While a few commenters recognized the potential for this proposal to mitigate accident consequences (primarily property damage), most commenters focused on the difficulty and great expense of first obtaining and then controlling development on a football field size right-of-way. The advisory committees recommended that OPS postpone further action until the Transportation Research Board of the National Academy of Sciences completes its study of the adequacy of public policy for land use near pipelines.

*Disposition:* In 1988, the Board issued *Special Report 219, Pipelines and Public Safety*, recommending that decisions regarding appropriate land use near pipelines continue to be made at the local level of government. The Board proposed a number of actions that local governments might take to minimize the risk of pipelines, one of which was to enact laws to prevent development on pipeline rights-of-way. OPS wholeheartedly supports this approach to solving the encroachment problem. OPS believes that in view of the high costs of obtaining and controlling the use of a 300-foot wide corridor for pipelines, the speculative benefit of such a corridor, and the traditional role of local governments in making land development decisions, it is not appropriate for the Federal Government to prescribe a minimum set-back distance between pipelines and buildings. Local governments are in a better position to balance the costs of such a decision against the anticipated benefits to the community. Consequently, the proposal is withdrawn from further consideration.

4. *Proposal: Fertilizer Pipelines.* [8] Regulate pipelines that carry chemical fertilizer products.

*Safety Task Force Recommendation C.8.*: Monitor the transportation by pipeline of hazardous liquids not currently covered by the Federal regulations and consider expanding regulatory coverage if changes in volume and distance transported and accident rates become significant.

*Comments*: Besides pipelines carrying liquid anhydrous ammonia ($NH_3$), which are already subject to part 195, a few commenters mentioned the possible need to regulate the pipeline transportation of ammonium nitrate-urea ($NH_4NO_3-NH_2(ONH_2-H_2O)$). The advisory committees advised OPS to postpone further regulatory action until it completes its effort to identify unregulated hazardous liquid pipelines.

*Disposition*: Ammonium nitrate-urea is a nonflammable colorless liquid, which can threaten the environment and drinking water if spilled from a pipeline. So far as OPS is aware, it is batched with petroleum products in pipelines that are subject to part 195. In a 1988 study, OPS identified only 43 miles of ammonium nitrate-urea pipeline that were unregulated, and now this mileage has been abandoned. Therefore, the proposal is withdrawn. OPS is continuing to monitor the transportation of any unregulated liquid pipelines that may pose an unreasonable risk to public safety, and will take regulatory action as needed.

5. *Proposal: Corrosion Control.* [10] Require existing hazardous liquid pipelines to be coated or cathodically protected to prevent corrosion.

*Comments*: A great deal of support for this proposal was received from commenters in Minnesota. Other commenters, particularly pipeline operators, generally did not favor the proposal because of alleged high costs and low benefits. Many commenters said the high level of electrical current that would have to be impressed on bare pipe in an attempt to achieve effective cathodic protection would provide minimal benefit and could generate corrosion on other underground facilities, including pipelines. Several alternatives to the proposal were recommended, including reconditioning or replacing pipe, annual testing at active corrosion locations, frequent line patrols and tests, and close interval corrosion surveys. The advisory committee recommended withdrawal of this proposal.

*Disposition*: Under present requirements, existing hazardous liquid pipelines with effective external coating must be cathodically protected in their entirety to prevent corrosion. The proposal, therefore, concerned uncoated or ineffectively coated pipelines. These are required to be cathodically protected only in places on the pipeline where operators discover active corrosion through electrical surveys or direct observation.

To cathodically protect these pipelines over their entire surface area without first coating or recoating them would, as commenters indicated, require very high levels of impressed currents. Cathodic protection systems producing such high current levels would be expensive to install and maintain, and could cause unavoidable adverse consequences. To install coating on all bare or ineffectively coated buried pipelines to facilitate cathodic protection would be an enormous, costly endeavor. Moreover, raising pipe sections and coating them would create unanticipated stresses and disturb pipe foundations, introducing new risk factors. Even if these risks were mitigated successfully, it is reasonable to project that the expense of coating or recoating all existing bare or ineffectively coated lines would be far disproportionate to the expected benefits.

OPS believes that the alternatives some commenters recommended, which are being done under existing regulations or voluntary practices, provide a more reasonable approach than the proposal to resolving corrosion problems on bare or ineffectively coated lines. Therefore, OPS has decided to follow the advisory committee's recommendation and withdraw the proposal.

6. *Proposal: Double-wall Pipe.* [11] Require new hazardous liquid pipelines and existing ones in populated areas to have double-wall construction with continuous leak detection systems.

*Comments*: Commenters generally expressed a negative reaction to the idea of using double-wall pipe, mentioning difficulties and extreme costs of installation, repair, corrosion control, and leak detection. The advisory committees recommended that the proposal be withdrawn.

*Disposition*: It is clear from the comments that this proposal would require the use of an essentially undeveloped technology. OPS is particularly concerned about the potential introduction of hazards that could be created by the inherent difficulty of locating and repairing leaks in the carrier pipe, the difficulty of providing cathodic protection, and the uncertainty surrounding construction and repair techniques. It is not clear from the comments that the proposal would produce any safety benefit. Indeed, the comments indicate a safety decrease would result. OPS concludes that the proposal is impractical and infeasible. It is, therefore, withdrawn.

Authority: 49 App. U.S.C. 1672 and 2002; 49 CFR parts 1 and 106.

Issued in Washington, DC, on June 5, 1990.

**George W. Tenley, Jr.,**

*Director, Office of Pipeline Safety.*

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# Part IV

# Department of the Interior

## Fish and Wildlife Service

50 CFR Part 40

**Temporary Subsistence Management Regulations for Public Lands in Alaska**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 40**

**RIN 1018-AB43**

## Temporary Subsistence Management Regulations for Public Lands in Alaska

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed temporary rule.

**SUMMARY:** This rule provides temporary regulations implementing the subsistence priority for rural residents of Alaska under title VIII of the Alaska National Interest Lands Conservation Act of 1980. The Alaska Supreme Court recently ruled that the laws used by the State of Alaska to provide the subsistence priority required by title VIII violated the Alaska Constitution. The court's action placed the State out of compliance with title VIII. Since the State has been unable to return to compliance with title VIII, the Federal Government is required to take over the implementation of title VIII on public lands.

**DATES:** Comments on this proposed rule must be received by June 18, 1990.

**ADDRESSES:** Comments and materials concerning the proposal should be sent to Bill Knauer at the U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

**FOR FURTHER INFORMATION CONTACT:** Bill Knauer, telephone (907) 786-3399.

**SUPPLEMENTARY INFORMATION:**

### Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires the Secretary of the Interior to implement a program to grant a preference in favor of subsistence uses of fish and wildlife resources on public lands unless the State of Alaska implements a subsistence program consistent with ANILCA's requirements. The State implemented such a program which the Department found to be consistent with ANILCA. In December 1989, however, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute, which is required by ANILCA, violated the Alaska Constitution. The court stayed the effect of the decision until July 1, 1990.

As a result of that decision, the Department of the Interior and the Department of Agriculture will be required to take over the implementation of title VIII of ANILCA on public lands. The Fish and Wildlife Service (Service) was delegated the lead responsibility for developing a contingency plan to fulfill the Department of the Interior's subsistence responsibilities. Five departments within the Federal government will be responsible for management of lands covered by title VIII. All departments are cooperatively developing these regulations.

These temporary rules will impact the subsistence uses of fish and wildlife resources on public lands in Alaska managed by the Fish and Wildlife Service, National Park Service, Bureau of Land Management, USDA-Forest Service, Bureau of Indian Affairs, Air Force, Army and various other Federal land managing agencies.

On April 13, 1990, a Notice of Intent to Propose Rules was published in the **Federal Register** (55 FR 13922) which solicited comments from the public. Because of the short time available, the opportunity for public review and comment was limited. The Service received 72 written comments in response to the Notice of Intent. All of these comments were taken into account in developing these proposed regulations.

Given the short time frame to prepare these proposed temporary regulations, and in anticipation of the State returning to compliance with title VIII, the proposed temporary regulations will establish a Federal program that minimizes change to the state programs consistent with meeting the Federal government's responsibilities under title VIII. To do otherwise would be extremely disruptive to subsistence users and create unnecessary chaos if and when the State is able to bring its subsistence program back into compliance with ANILCA. The various seasons and bag limits in effect under the State system are being reviewed by the various Federal land managers. Due to the short time frame, they will be published in late June and will be effective on July 1, 1990. Major changes to existing State seasons and bag limits are not anticipated. Should the Federal government be required to retain management responsibility beyond this year, changes to the seasons and bag limits will be considered according to the procedures set forth in § 40.16 of the regulations.

These temporary regulations will remain in place until December 31, 1991, or until the State brings its subsistence program back into compliance with ANILCA, whichever comes first. The development of permanent regulations, which is expected to start in 1990, will involve extensive public interaction and comment throughout the regulations development process, and will be completed by December 31, 1991.

The following discussion addresses specific issues or sections of the proposed temporary regulations which may be particularly confusing, controversial, require additional explanation, or elaboration of intent.

The Federal Government intends to minimize disruption to traditional State regulation and management of fish and wildlife. A high level of coordination and cooperation between the State and Federal regulatory programs is anticipated. These temporary regulations represent the provisions necessary for the Secretaries to fulfill their responsibilities for subsistence pursuant to ANILCA title VIII, in the event conflicts arise between the State and Federal programs. If the coordination and cooperation between the State and Federal regulatory programs are realized, then many of the regulatory tools contained herein will need to be used seldom or not at all.

A memorandum of agreement (MOA) will be developed with the State. The MOA will address the mechanics of how the State and Federal programs will interact and coordinate. Through the MOA, the Federal programs will minimize disruption to the State's regulatory program while still meeting the Secretary's responsibilities under title VIII.

*Section 40.3, Applicability and Scope*

Subsistence uses are not authorized in Glacier Bay National Park, Katmai National Park, Kenai Fjords National Park, or those portions of Denali National Park originally reserved as Mt. McKinley National Park. Consequently, the prohibition of subsistence uses in those areas is clarified in § 40.3 of these regulations.

*Section 40.4(e), Customary Trade*

Customary trade is included in ANILCA as part of the definition of subsistence uses. It is the intent of these regulations, and consistent with U.S. Senate Report No. 96-413, that customary trade not be used for the establishment of significant commercial enterprises under the guise of subsistence uses. The regulations allow for those types and volumes of customary trade of subsistence resources which existed prior to ANILCA passage.

*Section 40.4(m), Public Lands*

Title VIII applies to public lands, which are defined in section 102(3) of

ANILCA. Lands validly selected by the State or Native corporations formed under the Alaska Native Claims Settlement Act are excluded from the public lands definition in section 102(3).

About 29.1 million acres will be conveyed to fill State and Native Corporation entitlements. However, nearly 60 million acres have been selected by the State and Native Corporations. This means approximately 31 million acres of land are over-selected and therefore will not be transferred, and will become "public lands" as defined in section 102(3) after final adjudication. Although section 906(o) of ANILCA states that Federal agencies manage both Native-selected and State-selected lands, until transferred, the Departments consider the section 102(3) public lands definition to be controlling.

Navigable waters generally are not included within the definition of public lands. Navigable waters are those rivers, streams, lakes, or other waters which are used or susceptible of being used in their ordinary condition as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

*Section 40.10, Federal Subsistence Board*

Federal management of subsistence uses on the public lands requires an administrative structure be established to execute the Secretaries' subsistence responsibilities and perform functions specific to public lands. The proposed structure is the Federal Subsistence Board which will function similarly to the State Boards of Fisheries and Game. The Board will broadly execute the Secretaries' subsistence responsibilities which include: maintaining healthy fish and wildlife populations; setting Federal subsistence seasons and bag limits; making determinations of rural and non-rural communities and areas; determining customary and traditional subsistence uses; establishing and determining the membership of Regional Advisory Councils and local advisory committees specific to public lands.

Board membership is the regional or state directors of the Fish and Wildlife Service, National Park Service, USDA-Forest Service, Bureau of Land Management, and Bureau of Indian Affairs. These are the chief officials in Alaska of the primary Federal land managing agencies. These officials were chosen because of their public land management responsibilities. The Secretary of the Interior shall appoint the Chair of the Board with the concurrence of the Secretary of Agriculture.

*Sections 40.11 and 40.12, Regional Advisory Councils and Local Advisory Committees*

Councils and committees are required by ANILCA section 805. The existing State advisory system has broad responsibilities for dealing with subsistence take and uses as well as sport and commercial take statewide. These regulations require the Secretary to review the existing resource regions, regional advisory councils and local advisory committees to determine their adequacy for fulfilling the functions outlined in section 805. This will be accomplished by June 30, 1991. If the Secretary determines that the resource regions, regional advisory councils or local advisory committees are inadequate to fulfill the functions outlined in section 805, then these regulations empower the Board to establish a system of resource regions, councils, and committees, which are focused on subsistence uses specific to public lands. Public comment and participation will occur throughout the process of making the Secretary's determination and any subsequent actions as a result of the determination. Establishment of councils and committees by the Board will occur within 12 months after the date of the Secretary's determination if he determines that the existing regions, councils or committees are inadequate to fulfill the functions in section 805.

Pending the Secretary's determination pursuant to this section, the Boards shall review the administrative record developed by the State Board of Fisheries and Game, regional advisory councils and local advisory committees and associated public comment as a temporary means of fulfilling section 805 and gaining the input from the existing system of boards, councils and committees. Nothing in these regulations requires the Secretary to establish a separate system of councils and committees, though he may do so if necessary to fulfill his responsibilities pursuant to title VIII.

*Section 40.14, Relationship to State Procedures and Regulation*

As stated in § 40.5 these regulations anticipate an interactive process between the State fish and game regulatory procedure and the Federal subsistence regulatory procedure. The State, because of its Constitution, cannot provide a preference for rural residents with customary and traditional use of fish and wildlife as required by ANILCA. The State can facilitate harvest by rural residents through various regulations dealing with means and methods of take and perhaps other mechanisms.

If State regulations allow rural residents the opportunity to obtain their customary and traditional take and uses of fish and wildlife resources, the Federal regulations may closely parallel State regulations. The Federal program anticipates a highly cooperative, interactive relationship with the State system. To the extent that cooperation exists the Federal program will be able to minimize change to traditional State regulation and management of fish and wildlife.

*Section 40.15(b), Rural and Non-Rural Determinations*

The definition of rural is, perhaps, the key element in these regulations. ANILCA did not define rural. The State has been wrestling with the rural definition since passage of ANILCA. The Ninth Circuit Court of Appeals ruled in 1988 that the rural definition in the State's 1986 subsistence law is not consistent with ANILCA and the common meaning of the term rural.

The legislative history of ANILCA provides some insight. Senate Report 96–413 identified Anchorage, Juneau, Fairbanks and Ketchikan as examples of non-rural communities in 1980 and Barrow, Kotzebue, Nome, Bethel and Dillingham as examples of rural communities. It further states that the rural nature of such communities is not a static condition and can change.

The Federal government recognizes that communities of the same size may vary greatly in character for a variety of reasons. Therefore, no single population number adequately serves as a dividing line between rural and non-rural communities. The process to determine rural is designed to incorporate the common meaning of rural and is based on two rebuttable presumptions.

A community or area of less than 2500 population is deemed rural unless it exhibits characteristics of a non-rural nature or area or is part of an urbanized area. The number 2500 was selected because it is the figure used by the U.S. Census Bureau to divide rural from non-rural. A community between 2500 and 7000 bears no presumption as to its rural or non-rural status. Some communities fall in this population range which clearly appear to have rural character.

Communities 7000 or greater in population are presumed to be non-rural. The 7000 population level was chosen because Ketchikan, the smallest of the non-rural communities mentioned in the Senate report, was approximately

that size when ANILCA was passed and consequently is an indicator of Congressional intent. Communities in Alaska can approach and may rarely exceed a population level of 7000 and still be rural in character.

Determinations of rural or non-rural status by the State will be adopted by these regulations until December 31, 1990, unless superseded by determinations by the Federal Subsistence Board. This six month grace period will minimize confusion for existing subsistence users while allowing the Board to determine, according to the procedures in § 40.16, the rural or non-rural status of communities or areas within the State.

The Board will publish the characteristics it will use in determining rural or non-rural status. Communities with populations between 2500 and 7000 will be reviewed before other communities.

This definition and process recognize that population alone is not the sole indicator of a rural or non-rural community. This flexibility is consistent with approaches other Federal agencies have used to determine if communities are rural. For example, the Department of Housing and Urban Development uses a population base of 2500 but employs indicators such "rural in character" or "has a serious lack of mortgage credit" to include larger communities in its definition of rural. Examples of indicators which the Federal Subsistence Board may evaluate to decide if a community is rural or non-rural in character are: Fish and game use; development and diversity of the economy, transportation, communication, infrastructure, and educational and cultural institutions.

*Section 40.16, Regulation Adoption Process*

The process for promulgating Federal subsistence regulations specific to public lands will be similar, and at least initially, will use much of the State regulatory process. The advisory structure contemplated by Title VIII of ANILCA will be an integral part of the Federal regulatory structure. As discussed previously in §§ 40.11 and 40.12 regional advisory councils and local advisory committees may be established specific to Federal lands. Proposed regulations may originate from a variety of sources, but emphasis will be on the regional advisory council and local advisory committee system. While the public may comment and interact directly with the Board it is the intent of these regulations that most public comment and interaction with the regulatory process be channeled through the councils and committees. However, during the effective period of these temporary regulations the Federal regulatory process will rely substantially on the administrative record of the State system.

*Subpart D*

Subpart D extensively adopts existing State regulations dealing with methods and means of take. The State regulations are codified in title 5 of the Alaska Administrative Code. In many cases the language is verbatim from the State regulations. In other cases minor modifications have been made to make the regulation specified to this Federal program or Federal lands. The regulations cite the State regulations from which they were derived. These temporary regulations attempt throughout to limit change to the State regulations to that necessary to fulfill the Secretaries' responsibilities pursuant to title VIII.

*Section 40.24(a)*

Subsistence fishing for halibut is not authorized under the convention between the United States of America and Canada for the preservation of the halibut fishery of the northern Pacific Ocean and Bering Sea, as amended, or by National Marine Fisheries Service in 50 CFR part 301, and is, therefore, prohibited.

*Other Wild Renewable Resources*

ANILCA section 803 does not limit "subsistence uses" to fish and wildlife, but instead, uses the term "wild renewable resources." Vegetative resources and even water are included in this term. ANILCA section 805(d) allows the State of Alaska to regulate take of fish and wildlife for subsistence uses on public lands if in compliance with sections 803, 804 and 805, but does not include other renewable resources.

Federal agencies have managed these other resources through various policies and regulations. Some agencies, like NPS, BLM, and the USDA-Forest Service, have adopted subsistence wood harvest policies which allow subsistence harvest under a permit system. Water was treated as a subsistence resource in BLM's Central Yukon Resource Management Plan/EIS. Because of past management and the desire to avoid confusion, wherever possible, regulation of the use of other wild renewable resources will be left to the individual land managing agency. The various Federal land managing agencies will continue to follow existing regulations with respect to non-fish and wildlife resources. See, for example, 36 CFR 13.49.

*Access*

Section 811 of ANILCA addresses "Access" for subsistence as follows:

(a) The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.

(b) Notwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulations.

Generally, access by foot, snow machine, aircraft, and boat is allowed on public lands, but the use of all-terrain vehicles is on a site-specific basis. In National Parks and Park Monuments only, "* * * subsistence uses without use of aircraft as a means of access * * *" is allowed (46 FR 31849, June 17, 1981). The Park Service currently provides for "certain exceptions" which are managed under special permits issued by park superintendents for unusual circumstances, such as matters involving safety.

The NPS prohibition on the use of aircraft for subsistence in national parks or park monuments is consistent with the position taken in the **Federal Register** notice published on June 17, 1981 (46 FR 31836). It provides for exceptions to the aircraft prohibition in individual hardship situations (46 FR 31841). A local rural resident or community who believes they qualify under the hardship criteria at 36 CFR 13.45(b)(2) may apply for a permit as provided at 36 CFR 13.51. Nothing in these rules is intended to alter the existing NPS regulations on aircraft use for subsistence.

Decisions and regulations concerning access are the responsibility of the respective Federal land manager. Correspondingly, information on access is available from the Federal agencies for the lands they manage. Appeals on access rulings are handled according to the appeal procedures of the agency in question.

*Healthy Fish and Wildlife Populations*

The term healthy populations of fish and wildlife appears in title VIII as the standard against which subsistence use is to be regulated, and fish and wildlife are to be managed. The State uses the concept of sustained yield for its fish and wildlife regulatory program. Since the term healthy fish and wildlife populations appears in ANILCA, it is used instead of the term sustained yield, when identifying the standard for managing fish and wildlife under this

regulatory program, although the terms in practice are frequently similar. National Parks and Park Monuments are managed according to the more restrictive natural and healthy populations standard.

**Permanent Regulations**

These temporary regulations automatically expire on December 31, 1991. Consequently, the Federal government will begin development of permanent regulations shortly after the temporary regulations take effect, if the State appears to be unable to resume subsistence management on public lands in 1990. Public comment will be solicited. Public meetings will also be held in the affected areas to solicit comments. The Federal government will then revise the proposed regulations in response to public comments in agency and legislative mandates and publish them as final regulations. Once implemented, the permanent regulations would remain in effect until the State brings its subsistence program back into compliance with ANILCA.

*Conformance With Statutory and Regulatory Authorities*

The impact of these regulations on subsistence uses has been evaluated as required by section 810 of ANILCA. Subsistence use and access is expected to differ little from that previously allowed under State management. If change occurs it is expected to be beneficial to subsistence users. The regulations are consistent with the purposes and intent of section 810 and will result in no significant restrictions on subsistence activities.

Properly regulated and managed subsistence use is consistent with the purposes for which the various public lands in Alaska were established.

**National Environmental Policy Act Compliance**

The Federal assumption of subsistence management would generally maintain the status quo from the user's perspective. Responsibility and on the ground implementation would shift from State to Federal officials. Changes in environmental effects would be negligible. Therefore, the implementation of regulations relative to Federal assumption of subsistence management on public lands is determined to be a categorical exclusion as detailed in the USDI Departmental Manual (516 DM 6, Appendix 1).

**Paperwork Reduction Act**

The collections of information contained in this rule are being submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

**Economic Effects**

Executive Order 12291, "Federal Regulation," of February 19, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analysis for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291, and certifies that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificiant positive economic effect on a number of small entities. The number of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue pre-existing uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretary to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain Federal lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

William Knauer, Refuges and Wildlife, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska, is the primary author of this proposed rulemaking document.

**List of Subjects in 50 CFR Part 40**

Administrative practice and procedure, Alaska, Fish, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, chapter I, subchapter C of title 50 of the Code of Federal Regulations is proposed to be amended as shown below:

Amend chapter I, subchapter C by adding the following new part 40:

## PART 40—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

### Subpart A—General Provisions

Sec.
40.1 Purpose.
40.2 Authority.
40.3 Applicability and scope.
40.4 Definitions.
40.5 Federal subsistence policy, general.

### Subpart B—Program Structure

40.10 Federal subsistence board.
40.11 Regional advisory councils.
40.12 Local advisory committees.
40.13 Board/agency relationships.
40.14 Relationship to State procedures and regulations.
40.15 Board determinations.
40.16 Regulation adoption process.
40.17 Closures.
40.18 Appeals.

### Subpart C—General Requirements

40.20 Subsistence use qualifications.
40.21 Licenses, permits, harvest tickets, tags, and fees.
40.22 Penalties.

### Subpart D—Subsistence Hunting, Trapping, and Fishing

40.23 Subsistence hunting and trapping.
40.24 Subsistence fishing.
40.25 [Reserved]
40.26 Subsistence shellfish.

**Authority:** 16 U.S.C. 3101 et seq.; 668dd et seq.; 3; 551; 472; 18 U.S.C. 7; 3559; 3571; 43 U.S.C. 1733.

### Subpart A—General Provisions

**§ 40.1 Purpose.**

The regulations in this part implement the Federal Subsistence Management Program on public lands within the State of Alaska.

**§ 40.2 Authority.**

These regulations are issued pursuant to the Secretary of the Interior and of Agriculture authority specified in section 814 of the Alaska National Interest Land Conservation Act (94 Stat. 2371, Pub. L. 96–487).

**§ 40.3 Applicability and scope.**

The regulations of this part 40 apply to subsistence taking and uses of fish and wildlife on all public lands in the State of Alaska, and do not supersede agency specific regulations. Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park originally reserved as Mt. McKinley National Park are closed to subsistence activities.

**§ 40.4 Definitions.**

The following definitions apply to all regulations contained in this part unless otherwise provided in other regulations of this part.

(a) *Agency* means a subunit of a cabinet level Department such as U.S. Fish & Wildlife Service, USDA-Forest Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, Department of Army, Department of Air Force, National Marine Fisheries Service, etc.

(b) ANILCA means the Alaska National Interest Lands Conservation Act, Public Law 96–487, 94 Stat. 2371, as amended.

(c) *Barter* means the exchange of fish or wildlife or their parts taken for subsistence uses: for other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

(d) *Board* means the Federal Subsistence Board as described in § 40.10 of this part.

(e) *Council* means the Regional Subsistence Advisory Councils as described in § 40.11.

(f) *Customary trade* means types and volumes of trade in existence among rural resident subsistence users prior to the passage of ANILCA, and not of a level considered to be a significant commercial enterprise.

(g) *Customary and traditional use* means a consistent pattern of, and reliance for subsistence purposes upon fish and wildlife and other wild renewable resources near or reasonably accessible from the users' place of residence. Customary and traditional use determinations are community or geographic area based, except that outside established subsistence resident zones in certain National Parks or Park Monuments determinations may be specific to individuals.

(h) *Federal lands* means lands the title to which is in the United States.

(i) *Family* means all persons related by blood, marriage or adoption, or any person living within the household on a permanent basis.

(j) *Fish and wildlife* means any member of the animal kingdom, including without limitation any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or part thereof.

(k) *Local resident* means a rural resident with subsistence use in a specific geographic area.

(l) *Person* means an individual and does not include a corporation, company, partnership, firm, association, organization, business trust or society.

(m) *Public lands* means lands situated in Alaska which are Federal lands, except—

(1) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(2) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

(n) *Regulatory year* means July 1 through June 30.

(o) *Resident* means any person who has their primary, permanent home within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: The address listed on an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented or leased; location of stored household goods; residence of spouse, minor children or dependents; tax documents; or whether the person claims residence in another location for any purpose. Individuals are not required to occupy a home twelve months per year to be considered resident.

(p) *Rural* means any area of Alaska determined by the Board to qualify as such under the process described in § 40.15 of this part.

(q) *Secretary* means the Secretary of the Interior, except that in reference to matters related to the National Forest System, such term means the Secretary of Agriculture.

(r) *State* means the State of Alaska.

(s) *Subsistence uses* means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transporation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal family consumption; and for customary trade.

(t) *Take or taking* as used with respect to fish and wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

**§ 40.5 Federal subsistence policy, general.**

The Secretary under title VIII of ANILCA must accord a preference to subsistence uses of fish and wildlife on public lands. It is the policy of the Department to minimize conflict between resource uses on public and non-public lands. The Board will consider the recommendations of the State regional councils and local advisory committees, public input and comment, and actions of the State Boards of Fisheries and Game, as reflected in the administrative record, as a basis for decisions related to subsistence. The Board will give full consideration to State regulatory measures for fish and game uses and, where appropriate, adopt such measures, including State seasons and bag limits. However, the Secretary reserves the discretion, as embodied in these regulations, to prescribe different regulatory measures on public lands to protect subsistence uses consistent with section 804 of ANILCA.

## Subpart B—Program Structure

**§ 40.10 Federal subsistence board.**

(a) Subsistence taking and uses of fish and wildlife on public lands shall be administered by a Federal Subsistence Board.

(b) Membership. (1) The Board shall consist of five members. The members are: Alaska Regional Director, Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska Regional Forester, USDA-Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. Each member of the Board may appoint a designee.

(2) The Chair of the Board shall be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.

(c) Powers and duties. (1) Meetings shall occur at least annually, and at such other times as deemed necessary by the Board. Meetings will normally occur at the call of the Chair, but any member may request a meeting.

(2) A quorum shall consist of three members but no action may be taken unless three members are in agreement.

(3) The Board is empowered, to the extent necessary to implement title VIII of ANILCA, to:

(i) Promulgate regulations for the management of subsistence taking and uses of fish and wildlife on public lands;

(ii) Establish rules and procedures for the operation of the Board, the regional advisory councils and local advisory committees established pursuant to this part;

(iii) apply a subsistence priority, as necessary for rural Alaska residents on public lands;

(iv) Assess the biological status of fish and wildlife populations used for subsistence on public lands;

(v) Determine if a harvest from populations of fish and wildlife is consistent with the ANILCA requirement to maintain healthy fish and wildlife populations on public lands;

(vi) Make rural and non-rural determinations;

(vii) Determine which rural Alaska areas or communities have customary and traditional subsistence uses of fish and wildlife. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may extend to individual rural residents;

(viii) Review and respond to proposals by regional advisory councils for regulation, management plans, policies, and other matters related to subsistence taking and uses of fish and wildlife;

(ix) Close public lands to the taking of fish and wildlife authorized by State fish and game laws and regulations which may adversely affect subsistence taking and uses on those lands;

(x) Prioritize subsistence taking of fish and wildlife among users when necessary to maintain healthy fish and wildlife populations based on application of the following criteria:

(A) Customary and direct dependence upon the populations as the mainstay of livelihood;

(B) Local residency; and

(C) The availability of alternative resources.

(xi) Restrict or eliminate harvest of fish and wildlife by subsistence users if necessary to maintain healthy fish and wildlife populations, or for reasons of public safety, or administration;

(xii) Establish at least six geographic subsistence resource regions;

(xiii) Establish a regional advisory council in each subsistence resource region and appoint its members pursuant to the Federal Advisory Committee Act;

(xiv) Establish local advisory committees within the subsistence resource regions as necessary and appoint their members pursuant to the Federal Advisory Committee Act.

(xv) Such other duties as are necessary to implement the Secretary's responsibilities under title VIII of ANILCA.

(4) The Board shall consider the reports and recommendations of the Councils concerning the subsistence take of fish and wildlife on the public lands within their respective regions. The Board may choose not to follow any recommendation which it determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted, the Board shall set forth the factual basis and the reasons for the decision.

(5) The Board will establish a Staff Committee composed of personnel from the U.S. Fish and Wildlife Service, National Park Service, USDA-Forest Service, Bureau of Land Management, and Bureau of Indian Affairs for administrative assistance. Personnel from other Federal and State agencies will be invited to participate on the Staff Committee as appropriate. The Staff Committee's functions will include, but not be limited to:

(i) Making recommendations concerning the biological status of fish and wildlife populations;

(ii) Making recommendations on which communities or areas are "rural" and which have demonstrated "customary and traditional uses"; and

(iii) Compiling records of subsistence harvest of fish and wildlife resources.

(6) Additional committees may be formed as necessary to assist the Board.

(7) The Board may review and revise or rescind its actions.

(8) The Fish and Wildlife Service shall provide appropriate administrative support for the Board.

**§ 40.11 Regional advisory councils.**

(a) The Secretary shall during the effective period of these regulations review and determine the adequacy, for the purposes of the Secretary's responsibilities under title VIII of ANILCA, the existing State:

(1) Subsistence resource region;

(2) Regional advisory councils; and

(3) Local advisory committees.

(b) If the Secretary determines pursuant to § 40.11(a) that the subsistence resource regions, regional advisory councils or local advisory committees are inadequate to fulfill the functions described in section 805 of ANILCA, he shall establish subsistence resources region, regional advisory councils or local advisory committees in accordance with §§ 40.11 and 40.12.

(c) Pending the review and determination required by § 40.11(a) the Federal Subsistence Board shall review the proposals, actions, and associated public comments contained in the administrative record produced by the existing State Board of Fisheries and Game, Regional Advisory Councils, and local advisory committees. This review shall be an interim measure to gain the public input described in section 805 of ANILCA.

(d) The Board shall establish a Regional Advisory Council for each subsistence resource region within 12 months from the date of the Secretary's determination pursuant to § 40.11(a), if the Secretary determines existing State Regional Advisory Councils are inadequate to meet the requirements of section 805 of ANILCA. The Councils will provide a regional forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on public lands. The Councils will provide for public participation in the regulatory process.

(e) Establishment of Councils-Membership. (1) The number of members of each council shall be established by the Board, and shall be an odd number. A Council member must be a resident of the region in which he/she is appointed and be knowledgeable about the region and subsistence uses therein. The Board shall solicit nominations from the public. Appointments to the Councils are made by the Board.

(2) Council members shall serve 3 year terms and may be reappointed. Initial members shall have staggered terms.

(3) The Chair of the Council shall be elected by the Council for a one year term and may be reelected.

(f) Powers and Duties. (1) The Councils are empowered to:

(i) Hold public meetings on fish and wildlife subsistence matters;

(ii) Elect officers;

(iii) In consultation with the local advisory committees in its region; review, evaluate, and make recommendations to the Board on any

existing or proposed regulation, policy, or management plan, or any other matter relating to the subsistence take of fish and wildlife within or affecting its region.

(2) The Councils shall:

(i) Prepare and submit to the Board an annual report containing;

(A) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) An evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;

(C) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and

(D) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy.

(ii) Provide a forum for, and assist the local advisory committees in obtaining the opinions and recommendations of rural residents interested in subsistence taking and uses of fish and wildlife.

(iii) Attempt to develop areas of compromise and reach a regional consensus if differences of opinion exist among the local advisory committees.

(iv) Perform other duties specified by the Board.

(3) Each Council must comply with rules of operation established by the Board.

(g) The Fish and Wildlife Service shall provide appropriate financial, technical and administrative assistance to the Councils.

**§ 40.12 Local advisory committees.**

(a) The Board shall establish local advisory committees as deemed necessary within each subsistence resource region, if the Secretary determines pursuant to 40.11(a) that the existing state local advisory committees are inadequate to fulfill the requirements of ANILCA section 805. The committees will provide a local public forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife, may make recommendations to the councils concerning regulations, and will provide for public participation in the regulatory process to help adequately protect subsistence uses.

(b) Establishment and membership of committees. (1) Committees and their membership shall be recommended by the Regional Councils to the Board. The membership of each committee shall be an odd number. Members must be residents of the local area, and be knowledgeable about the area and subsistence uses. Nominations will be from the Councils. Authorizations of and appointments to the committees are made by the Board.

(2) Committee members shall serve 3 year terms and may be reappointed. Initial appointments shall have staggered terms.

(3) The Chair of the committee shall be elected by the committee for a one-year term and may be reelected.

(4) When considering a request by a Council to create a committee, the Board will consider:

(i) Whether existing representation is adequate, and

(ii) Whether participation in the Board's decision making process would be enhanced meaningfully.

(c) Powers and duties. (1) The committees are empowered to:

(i) Elect officers;

(ii) Provide a local forum for proposing regulations of subsistence taking and uses of fish and wildlife, habitat management, and assisting the Councils in obtaining the opinions and recommendations of rural residents interested in subsistence taking and uses of fish and wildlife matters;

(iii) Develop regulatory proposals for submission to the Council;

(iv) Evaluate regulatory proposals submitted to the committees and make recommendations to the Council and Board;

(v) Advise the appropriate regional council regarding the conservation, development, and subsistence use of fish and wildlife resources;

(vi) Work with the appropriate regional council to develop subsistence management plans and harvest strategy proposals; and

(vii) Cooperate and consult with interested persons and organizations, including government agencies, to accomplish their charge,

(viii) Perform other duties specified by the Board.

(2) Committees must comply with rules of operation established by the Board.

(d) The Fish and Wildlife Service shall provide appropriate financial, technical, and administrative assistance to the committees.

**§ 40.13 Board/agency relationships.**

(a) General. (1) The Board, in making decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on conservation system units or other public lands, recognizing that the management policies applicable to some units may entail methods of resource and habitat management and protection different from methods appropriate for other units.

(2) The Board shall promulgate a single set of regulations for subsistence taking of fish and wildlife on public lands. An agency may submit proposed regulations to the Board for inclusion. The Board is the final administrative authority on the promulgation of regulations relating to the subsistence taking of fish and wildlife on public lands, unless the Secretary at his discretion chooses to exercise his review authority.

(3) Nothing in these regulations shall abrogate the authority of individual Federal agencies to promulgate regulations necessary for the proper management of lands under their jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes park and park monument Subsistence Resource Commissions. Nothing in these regulations affects the appointments, duties or authorities of those Commissions.

**§ 40.14 Relationship to State procedures and regulations.**

(a) State of Alaska fish and wildlife regulations, other than subsistence regulations, apply to public lands unless the Board finds it necessary to promulgate regulations which supersede State regulations in order to ensure the opportunity for subsistence take of fish or wildlife on public lands.

(b) The Board may close public lands to hunting and fishing, or establish seasons and bag limits different from the State. Such regulations may be implemented through individual agency closure authority. Where applicable to all public lands such regulations will be promulgated by the Board. The Board may allow State closures to stand which serve to achieve the objectives of title VIII of ANILCA.

**§ 40.15 Board determinations.**

(a) *Healthy fish and wildlife populations.* Determinations of healthy populations of fish and wildlife shall be based upon the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems and minimizes the likelihood of irreversible or long term adverse effects upon such populations and species. Natural populations, for this section, shall include existing, nonindigenous populations. Such determinations shall also recognize that customary and traditional subsistence uses by local

rural residents may be a natural part of such ecosystems. Habitat manipulation or control of other species for the purpose of maintaining subsistence uses is not authorized within National Park System Units.

(b) *Rural determinations.* Not later than December 31, 1990, the Board shall determine the rural or nonrural status of all areas or communities within Alaska. Pending such determination each area or community will retain its rural or non-rural status pursuant to Alaska Administrative Code (5 AAC 99.014). In determining whether a particular area of Alaska is rural, the Board will use the procedures set forth in § 40.16 and use the following guidelines:

(1) A community or area with a population of 2500 or less will be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is part of an urbanized area.

(2) Communities or areas with populations between 2500 and 7000 will be determined rural or non-rural before other areas or communities are reviewed. The characteristics identified pursuant to § 40.15(b)(5) will be used to make these determinations.

(3) A community with a population of 7000 or more is presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor will be utilized in this process.

(5) Community or area characteristics will be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to: fish and wildlife use; and development and diversity of: the economy, transportation, communication links, community infrastructure, educational and cultural institutions, and government institutions.

(6) Communities or areas which are economically, socially and communally integrated will be considered in the aggregate.

(c) *Customary and traditional determinations.* In making determinations of whether subsistence uses are customary and traditional, the Board may examine but not be limited to the following factors which exemplify customary and traditional use:

(1) The length, consistency and pattern of use.

(2) The degree of past and current reliance upon particular subsistence uses near or reasonably accessible from the user's place of residence.

(3) Whether current consistent use patterns provide substantial economic, cultural, social, or nutritional elements of the subsistence users' lives, as related to the importance of such uses to subsistence users' lives in the past.

(4) How the methods and means of taking relate to efficiency and economy of effort and cost, as conditioned by local circumstances, and as related to past methods and means of taking.

(5) Whether the present means of handling, preparing, preserving, and storing fish or game have been traditionally used by past generations—without excluding consideration of recent technological advances where appropriate.

(6) The passage of knowledge of fishing and hunting skills, values, and lore from generation to generation.

(7) Distribution or sharing of hunting or fishing effort, or the products of that effort (by customary trade, barter, sharing, and gift-giving), among others according to custom and tradition.

**§ 40.16 Regulation adoption process.**

(a) The public shall be provided opportunities to participate in and comment on proposed changes in the regulations. The regulation adoption process should reasonably coincide with the State of Alaska's annual process of establishing fish and game regulations.

(b) Early in the regulatory year the Board shall provide to the Councils and committees, once established, and public a schedule of the regulatory and amendment process.

(c) The committees and Councils must submit proposals to the Board in compliance with the schedule. Committee proposals must be submitted through the Councils. Proposals, however, may originate from any source; but to receive full consideration, must meet the published schedule. Proposals originating from individuals other than the Board, Council or committee will be referred by the Board to the Councils for comments. Each Council and committee shall hold at least one public meeting per year in its region or area to solicit public comment on proposals. The publics' and Councils' comments shall be forwarded to the Board in accordance with the schedule.

(d) The Board, based on comments from the Councils and public, and on resource and resource use information, shall develop draft regulations, publish a notice of availability in the **Federal Register**, and provide other public notice necessary to obtain public participation. A comment period of no less than 30 days shall be provided. The Board shall hold at least one public meeting to obtain public comment on the proposed regulations.

(e) Following the comment period, the final regulations shall be published in the **Federal Register** and will become effective on the date of publication or such later date as may be determined by the board.

**§ 40.17 Closures.**

(a) The Board may make or direct temporary closures of subsistence taking on public lands, if necessary, for reason of public safety, administration, or to assure the continued viability of a particular fish or wildlife population. In so doing, the Board will consult with the State, and provide adequate notice and public hearing to the affected communities.

(b) In an emergency situation, the Board may direct immediate closure of public lands to any or all hunting or fishing, including subsistence take. The Board shall publish notice and reasons justifying the closure in the **Federal Register** and in newspapers of the area(s) affected. The closure shall be effective when made, may not exceed 60 days, and may not be extended unless it is determined, after notice and hearing, that such closure should be extended.

(c) Any closure, pursuant to title VIII, exclusive of those made through the annual regulatory process, which does not apply to all public lands will be implemented through the regulations governing such closures by each agency which manages public land in Alaska. Public notification and involvement procedures of the involved agency(s) shall be followed.

(d) Based on emergency need for subsistence, the Board may extend or change seasons or increase bag limits. The Board may consider an emergency under this item only upon a petition from an affected rural resident or community. If such changes are granted they shall be for the minimum time period and bag limit necessary to meet the need and may be made only after a determination by the Board that the proposed change will not affect the maintenance of healthy fish and wildlife populations.

The decision of the Board shall be the final administrative action.

**§ 40.18 Appeals.**

(a) Decisions of the Board are subject to requests for reconsideration.

(b) Any affected person may file a request for reconsideration.

(c) To file a request for reconsideration, the requestor must notify the Board in writing within 45 days of the date on the notice of the

written decision for which reconsideration is requested.

(d) It is the responsibility of a requestor to provide the Board with sufficient narrative evidence and argument to show why a decision by the Board should be reconsidered. The following information must be included in the request for reconsideration:

(1) The requestor's name, mailing address, and daytime telephone number (if any);

(2) The decision for which reconsideration is requested and the date of that decision;

(3) A statement of how the requestor is adversely affected by the decision;

(4) A statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that the requestor believes to be violated and the reason for such allegation;

(5) A statement of how the requestor would like the decision changed.

(e) Stays. (1) A decision may be implemented while the Board is reconsidering that decision unless the Board grants a stay.

(2) If a stay is desired, it must accompany the request for reconsideration. The stay request must contain a description of the decision to be stayed, specific reasons why the stay should be granted including specific adverse effect(s) upon the requestor, harmful site-specific impacts or effects on resources, and how the cited effects and impacts would prevent a meaningful reconsideration of the decision.

(3) The Board must issue a written decision on a stay request within 10 calendar days of receiving a stay request.

(f) The Board shall make a final decision on a request for reconsideration within 45 days after receiving such a request. The decision of the Board is the final administrative remedy except as specified in § 40.18(g). Further relief is only available through the courts.

(g) The Secretary, at his discretion, may review actions by the Board.

(h) Decisions by a Federal agency outside its role on the Board are subject to appeal under the appeal procedures of that agency.

## Subpart C—General Requirements

### § 40.20 Subsistence use qualifications.

(a) The taking of fish and wildlife on public lands for subsistence uses as defined in § 40.4 is restricted to Alaska residents of rural areas or communities. Non-rural residents are not provided a preference for the taking of fish and wildlife on public lands.

(b) This section does not limit the authority of the Board, or individual Federal land management agencies, to further restrict the class of qualifying subsistence users in particular cases based upon specific authority in ANILCA or other Federal statutes.

### § 40.21 Licenses, permits, harvest tickets, tags, and fees.

(a) Persons engaged in subsistence activities related to the taking of fish or wildlife on public lands must possess State of Alaska licenses, permits, harvest tickets, and tags and must comply with reporting and validation requirements. The intent of these regulations is to maximize the use of the State license and permit system, consistent with the sound management of fish and wildlife and fulfillment of the Secretary's title VIII responsibilities.

(b) In addition to any licenses or permits required by paragraph (a) of this section, persons engaged in subsistence activities on public lands must possess any Federal licenses or permits that may be required for such activities.

(c) Upon request of a State or Federal law enforcement officer, individuals must produce: Licenses, permits, harvest tickets, tags, or other pertinent documents required by this Section; and, any apparatus designed to be, or capable of being used to harvest fish or wildlife.

### § 40.22 Penalties.

Any person convicted of violating any provision of 43 CFR part 40 may be punished by a fine not to exceed $5,000 or imprisonment not to exceed six months or both in accordance with the penalty provisions prescribed by the applicable listed authorities of part 40.

## Subpart D—Subsistence Hunting, Trapping, and Fishing

Note: Subpart D closely follows existing State Fish and Game regulations which are codified in title 5 of the Alaska Administrative Code. In many cases the language is identical to state regulation or modified so it applies only to this Federal program on public lands. The regulations note particular State provisions from which they were derived.

### § 40.23 Subsistence hunting and trapping.

(a) Definitions. The following definitions shall apply to all regulations contained in this subpart (derived from 5 AAC 92.990):

(1) *ADF&G* means Alaska Department of Fish and Game.

(2) *Aircraft* means a fixed-wing machine or device that is used or intended to be used to carry persons or objects through the air, including airplanes and gliders.

(3) *Airport* means an airport listed in the Federal Aviation Agency, Alaska Airman's Guide and chart supplement.

(4) *Animal* means those species with a vertebral column (backbone).

(5) *Bag limit* means the number of any one species permitted to be taken by any one person in the unit or portion of a unit in which the taking occurs; however, additional numbers of a species may be taken in another designated open unit or portion of a unit where a greater limit on that species is prescribed. In no case may the total or cumulative bag for one person or designated group exceed the limit set for the unit or portion of a unit in which the additional animals are taken. A subsistence bag limit and a general bag limit for the same species are not cumulative.

(6) *Big game* means black bear, brown and grizzly bear, bison, caribou, deer, elk, mountain goat, moose, musk oxen, mountain or Dall sheep, wolf and wolverine.

(7) *Bow* means long bow, recurve bow, or compound bow, but not crossbow.

(8) *Broadhead* means an arrowhead with two or more steel cutting edges having minimum cutting diameter of not less than seven-eights inch.

(9) *Brow tine* means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

(10) *Bull moose* means any male moose.

(11) *Closed season* means the time when wildlife may not be taken.

(12) *Cub bear* means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

(13) *Dire emergency* means a situation in which a person:

(i) Is in a remote area;

(ii) Is involuntarily experiencing an absence of food required for sustenance;

(iii) Will be unable to perform the functions necessary for survival, leading to a high risk of death or serious and permanent health problems if wild game food is not immediately taken and consumed; and

(iv) Cannot expect to obtain alternative food sources in time to avoid the consequences described in (a)(13)(iii) of this section.

(14) *Drawing permit* means a permit issued in a limited number to people who are selected by means of a lottery held for all people submitting valid applications for such persons, and who agree to abide by the conditions specified for each hunt.

(15) *Full curl horn* means the horn of a male mountain or Dall sheep, the tip of at least one of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken or that the sheep is at least eight (8) years of age as determined by horn growth annuli.

(16) *Fur animal* means coyote, arctic fox, red fox, lynx, raccoon, or red squirrel, except domestically raised fur animals; "fur animals" is a classification of animals subject to taking with a hunting license.

(17) *Furbearer* means beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, raccoon, red squirrel, flying squirrel, marmot, wolf or wolverine.

(18) *Highway* means the drivable surface of any constructed road.

(19) *Household* means that group of people domiciled in the same residence.

(20) *Hunting area for a species* means that portion of a game management unit where a subsistence season and a bag limit for that species are set.

(21) *Motorized vehicle* means a motor-driven land or water conveyance.

(22) *Open season* means the time when wildlife may be taken; each period prescribed as an open season includes the first and last days of the period prescribed.

(23) *Permit hunt* means a hunt for which permits are issued by drawing, registration or other means.

(24) *Poison* means any substance which is toxic or poisonous upon contact or ingestion.

(25) *Registration permit* means a hunting permit issued to a person who agrees to the conditions specified for each hunt; permits are issued in the order applications are received; and are issued:

(i) Beginning on a date announced and continuing throughout the open season, or until the season is closed by emergency order when a harvested quota is reached; or

(ii) Beginning on a date announced and continuing until a predetermined number of permits has been issued.

(26) *Sealing* means placing a mark or tag on a portion of an animal by an authorized representative of the ADF&G; "sealing" includes collecting and recording information concerning the conditions under which the animal was harvested and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

(27) *Seven-eights curl horn* means the horn of a mountain sheep, the tip of which has grown through seven-eights of a circle (315 degrees), described by the outer surface of the horn, as viewed from the side, or with both horns broken.

(28) *Skin, hide and pelt* are all the same thing, and mean any tanned or untanned external covering of an animal's body: skin, hide, or pelt of a bear shall mean the entire external covering with claws attached.

(29) *Small game* means all species of grouse, hares, rabbits, ptarmigan, waterfowl, cranes and Wilson or jacksnipe.

(30) *Tine* or antler point refers to any point on an antler whose length is at least one inch, and is greater in length than in width, measured in a straight line across the base.

(31) *Transport* means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export.

(32) *Unclassified game* means all species of game not othewise classified in the definitions.

(33) *Unit* means one of the 26 geographical areas listed under game management units in the ADF&G's codified hunting, trapping and guiding regulations and the Game Management Unit Map of Alaska.

(34) *Year* means calender year unless another year is specified.

(b) Small game and unclassified game, fur animals, furbearers, big game, and waterfowl, snipe and cranes may be taken for substance by any method, unless prohibited below or by other Federal statute.

(1) The following methods of taking game are prohibited (derived from 5 AAC 92.080):

(i) By shooting from, on, or across a highway;

(ii) With the use of any poison;

(iii) Knowingly, or with reason to know, with the use of a helicopter in any manner, including transportation to or from the field of any unprocessed game or parts of game, any hunter or hunting gear, or any equipment used in the pursuit or retrieval of game; this paragraph does not apply to transportation of a hunter, hunting gear, or game during an emergency rescue operation in a life-threatening situation;

(iv) Unless otherwise provided in this chapter, from a mechanical vehicle, or from a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased, except that a motor-driven boat may be used to take caribou in (State Game Management Unit) Unit 23;

(v) With the use of an aircraft, snowmachine, motor-driven boat, or other motorized vehicle for the purpose of driving, herding, or molesting game;

(vi) With the use or aid of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) With the aid of a pit, artificial light (except that coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights) radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, or a conventional steel trap with a jaw spread over nine inches; however, the "conibear" style trap with a jaw spread of less than 11 inches may be used;

(viii) With a snare, except for taking unclassified game, furbearer, grouse, hare, or ptarmigan.

(ix) By intentionally feeding a bear, wolf, fox, or wolverine, or intentionally leaving human food or garbage in a manner that attracts these animals. This does not apply to bait used for trapping furbearers or hunting black bears consistent with following regulations.

(2) The following methods and means of taking big game for subsistence are prohibited in addition to the prohibitions in § 40.23(b)(1) (derived from 5 AAC 92.075 and 92.085):

(i) With the use of a firearm other than a shotgun, muzzle-loaded rifle without scope, or rifle or pistol using a center-firing cartridge, except that:

(A) In Unit 23, swimming caribou may be taken with a firearm using rimfire cartridges;

(B) The use of a muzzleloading rifle is prohibited for brown/black bear, moose, bison, musk ox and mountain goat unless such a firearm is .54 caliber or larger, or at least .45 caliber and a 250 grain or larger elongated slug is used;

(ii) With a crossbow in any area restricted to hunting by bow and arrow only;

(iii) With a longbow, recurve bow, or compound bow unless the bow is capable of casting a broadhead-tipped arrow at least 175 yards horizontally, the arrow is tipped with a broadhead, and arrow and broadhead together weigh at least one ounce (437.5 grains), and the broadhead is not barbed, and unless the hunter has successfully completed an ADF&G approved bowhunter education course and minimum shot placement qualification test and carries an endorsement to this on their license;

(iv) With the use of bait; except that black bears may be taken with the use of bait between April 15 and June 15, but only in Units 1 (except 1(C)), 2, 3, 5, 6, 7 (except Resurrection Creek and its drainages), 11, 13, and 15–17; the season shall be April 15 through June 30 in Units 12, 19–21, 24, and 25, and April 15 through May 31 in Units 14(A) and 14(B).

In these units, baiting of black bears is subject to the following restrictions:

(A) Only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and game may be used for bait;

(B) No person may use bait within one-quarter mile of a publicly maintained road or trail;

(C) No person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground or developed recreational facility;

(D) A hunter using bait shall clearly mark the bait station with a sign that displays the hunter's hunting license number and ADF&G assigned number;

(E) A hunter using bait shall remove litter and equipment from the bait station site when hunting is completed;

(F) No person may give or receive remuneration for the use of a bait station, including barter or exchange of goods; however, this does not apply to licensed master or registered guides, or their assistant guides, who personally accompany the client at the bait station site;

(G) No person may have more than two bait stations established (bait present) at any one time;

(H) No person may establish a black bear bait station unless he or she first registers the site with ADF&G;

(v) With the aid or use of a dog, except that a dog may be used to hunt black bear by permit issued at the discretion of the ADF&G;

(vi) With the use of a trap or snare;

(vii) While a big game animal is swimming, except that a swimming caribou may be taken in Unit 23;

(viii) No person who has been airborne, except in regularly scheduled commercial jet aircraft flights, may take for subsistence uses a big game animal in a National Preserve units until 3 a.m. following the day in which the flying occurred.

(ix) No person who has been airborne, except in regularly scheduled commercial jet aircraft flights, may take for subsistence purposes or assist in taking a big game animal until after 3 a.m. following the day in which the flying occurred; however, this paragraph does not apply to subsistence taking of deer, or to subsistence taking of wolves during August 10–March 31 in Units 9, 11, 12, 13 (excluding that portion of Unit 13(E) west of the Parks Highway), 17, 19, 20, 21, 24, 25(B), 25(C), and 25(D); additionally with respect to wolves:

(A) No person may take a wolf without first obtaining from ADF&G, a numbered registration permit and numbered, nontransferable locking tags;

(B) Shotguns may not be used to take wolves;

(C) A person taking a wolf shall immediately affix one of the tags to the skin of the wolf until the skin is sealed according to ADF&G procedures;

(x) From a boat in Units 1–5.

(3) The following methods and means of taking fur animals for subsistence under a hunting license are prohibited, in addition to the prohibitions in § 40.23(b)(1) (derived from 5 AAC 92.090):

(i) By using a dog, trap, snare, net, or fish trap;

(ii) By disturbing or destroying a den;

(iii) By having been airborne and using a firearm to take or assist in taking an arctic or red fox until after 3 a.m. on the day following the day in which the flying occurred.

(4) The following methods and means of taking furbearers for subsistence under a trapping license are prohibited, in addition to the prohibitions in § 40.23(b)(1) (derived from 5 AAC 92.095):

(i) By disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) By disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that a firearm may be used to take beaver in Unit 18 from April 1 through June 10, and in Units 8, 22, and 23 throughout the seasons established herein;

(iv) Taking land otter with a steel trap having a jaw spread of less than five and seven-eights inches during any closed mink and marten season in the same game management unit;

(v) Using a dog, net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation or by landing within one mile of a beaver trap or set used by the person transported;

(vii) Taking a wolf in Units 12 and 20(E) during March, April or October with a steel trap, or with a snare smaller than 3X;

(viii) Having been airborne and using a firearm to take or assist in taking an arctic fox, red fox, wolf, or wolverine until after 3 a.m. on the day following the day in which the flying occurred; this paragraph does not apply to a trapper using a firearm to dispatch a fox, wolf, or wolverine caught in a trap or snare;

(ix) Taking a red fox in Unit 15 by any means other than a steel trap or snare.

(5) The following methods and means of hunting waterfowl, snipe, and cranes for subsistence are prohibited, in addition to the prohibitions in § 40.23(b)(1) (derived from 5 AAC 92.100):

(i) With a rifle or pistol, a shotgun larger than 10 gauge, or a shotgun not plugged to 3 shell capacity;

(ii) From a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased;

(iii) From sunset to one-half hour before sunrise.

(C) Possession and Transportation of Wildlife (derived from 5 AAC 92.130 and 92.140)

(1) Unless otherwise prohibited, no person may take a species of game in any unit or portion of a unit if that person's total statewide take of that species already equals or exceeds the bag limit for that species in that unit or portion of a unit in that regulatory year.

(2) The bag limit specified herein for a subsistence season for a species and the state bag limit set for a state general season for the same species are not separate and distinct. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional animals of that species under any other bag limit specified for a State general season.

(3) The bag limit specified for a trapping season for a species and the bag limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a bag limit for a particular species under a trapping season may take additional animals under the bag limit specified for a hunting season or vice versa.

(4) A bag limit applies to a regulatory year unless another time period is specified in the bag limit.

(5) No person may possess, transport, or give, receive or barter game or parts of game that the person knows or should know were taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(d) Evidence of sex and identity (derived from 5 AAC 92.150)

(1) No person may possess or transport a mountain sheep unless both horns accompany the animal if the subsistence take is restricted to a single sex.

(2) If the subsistence taking of a big game animal, except sheep, is restricted to one sex, no person may possess or transport the carcass of an animal unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, this section does not apply to the carcass of a big game animal that

has been cut and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(3) If a moose bag limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, this subsection does not apply to a moose carcass or its parts that have been cut and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(4) Until the hide has been sealed by a representative of the ADF&G, no person may possess or transport the hide of a brown bear taken in Unit 4 which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(e) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify the ADF&G or an agency, if identified on the collar or marker, when and where the animal was killed. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required, and in all cases any identification equipment must be returned to the ADF&G or to an agency identified on such equipment (derived from 5 AAC 92.160).

(f) Sealing of Bear Skins and Skulls (derived from 5 AAC 92.165).

(1) As used in this section,

(i) *Bear* means brown bears in all units, and black bears of all color phases taken in Units 1–7, 11–16, and 20;

(ii) *Temporary sealing form* means a form available at ADF&G offices for providing information regarding date and location of bear kill, species of bear, name and address of the hunter, name of the guide, and other information requested by the ADF&G on the form;

(iii) *Sealing certificate* means a form used by the ADF&G for recording information when sealing a bear.

(2) No person may possess, transport, or export from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of the ADF&G within 30 days after the taking, or a lesser time if requested by the ADF&G. The seal must remain on the skin until the tanning process has commenced. A brown bear taken in Units 8 or 12 may not be transported from that unit until it has been sealed. A brown bear taken in Unit 20(E) may not be transported from that unit, except to Tok, until it has been sealed.

(3) Except as provided in (c) of this section, a person who kills a bear must personally present the skin and the skull to an authorized representative of the ADF&G for sealing within 30 days after the taking, or a shorter time if requested by the ADF&G, and must sign the sealing certificate at the time of sealing.

(4) A person who takes a bear but is unable to present the skin and skull in person must complete and sign a temporary sealing form and ensure that the completed temporary sealing form, along with the bear skin and skull, are presented to an authorized representative of the ADF&G for sealing within 30 days after the taking.

(5) If a person kills a brown bear, while on a guided hunt or while hunting with a resident relative, the hunter, as well as the guide or resident relative who accompanied the hunter, shall sign the sealing certificate. If a temporary sealing form is used, the hunter, as well as the guide or resident relative, shall sign the temporary sealing form.

(6) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin. The ADF&G may require that the skull of the bear be skinned and that the skin and skull not be frozen at the time of sealing.

(7) No person may falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G.

(g) Sealing of Martin, Lynx, Beaver, Otter, Wolf, and Wolverine (derived from 5 AAC 92.170).

(1) No person may possess, transport, or export from the state the untanned skin of a marten taken in Units 1—5, 7, and 15, or the untanned skin of a lynx, beaver, land otter, wolf, or wolverine, whether taken inside or outside the state, unless the ADF&G has sealed the skin. The seal must remain on the skin until the tanning process has commenced or the skin has been transported from the state; however, the seal may be removed from the skin of a marten taken in Units 1—5 when the skin has been prepared for shipment from the state.

(2) The sealing of marten, lynx, beaver, land otter, wolf, or wolverine must be accomplished as follows:

(i) Wolf (in Unit 15(A)) taken by hunting or trapping must be sealed on or before the 5th day after the date of taking;

(ii) Wolf (except in Unit 15(A)), wolverine, and lynx taken by hunting must be sealed on or before the 30th day after the date of taking;

(iii) Marten (Units 1–5, 7, and 15 only), wolf (except in Unit 15(A)), wolverine, lynx, beaver, and otter taken by trapping must be sealed on or before the 30th day after the close of the season in the unit where taken.

(3) The sealing periods described in § 40.23(g)(2) of this section may be temporarily reduced by an authorized employee of the ADF&G.

(4) A person who takes a species listed in § 40.23(g)(2) of this section must bring the skin for sealing to an authorized representative of the ADF&G and must complete a report on a form provided by the ADF&G.

(h) No person may use game as food for a dog or furbearer, or as bait, except for the following (derived from 5 AAC 92.210):

(1) The hide, skin, viscera, head, or bones of game;

(2) The skinned carcass of a furbearer or fur animal;

(3) Red squirrels and small game; however, the breast meat of small game birds may not be used as animal food or bait;

(4) Legally taken unclassified game.

(i)(1) The following definitions shall apply to this paragraph (derived from 5 AAC 92.220):

(i) *Wild fowl* means species of wild bird for which seasons or bag limits have been established by State or Federal law.

(ii) *Edible meat* means, in the case of big game animals, the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (knee), hindquarters as far as the distal joint of the tibia-fibula (stifle joint) and that portion of the animal between the front and hindquarters; in the case of wild fowl, the meat of the breast; however, "edible meat" of big game, wild fowl or fish does not include: meat of the head; meat that has been damaged and made edible by the method of taking, bones, sinew and incidental meat reasonably lost as a result of boning or a close trimming of the bones; or viscera.

(2) A person taking game for subsistence shall salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel and land otter, and the hide or meat of a beaver or muskrat;

(ii) The hide, skull and edible meat of a brown bear;

(iii) The hide, skull and edible meat of a black bear.

(3) A person who kills a big game animal or a species of wild fowl may not

intentionally, knowingly, recklessly, or with criminal negligence fail to salvage for human consumption the edible meat of the animal or fowl.

(4) Failure to salvage or possess the edible meat may not be a violation if due to circumstances beyond the control of a person, including theft of the animal or fowl, unanticipated weather conditions or other acts of God, or unavoidable loss in the field to another wild animal.

(5) If a person is convicted of violating this section and in the course of that violation failed to salvage from a big game animal at least the hindquarters as far as the distal joint of the tibia-fibula (stifle joint), the court shall impose a sentence of imprisonment of not less than seven consecutive days and a fine of not less than $2,500.

(6) It is unlawful for a person to possess the horns or antlers of a big game that was killed after the opening of the current or most recent lawful season for the animal unless the person also possesses the edible meat of the animal. However, this does not apply to the acquisition of the horns or antlers as a gift after the edible meat of the big game animal was salvaged, or the edible meat is no longer present due to personal consumption.

(j) Subsistence taking of fish or wildlife shall not be considered an emergency taking. Situations where emergency taking of wildlife are allowed are defined in § 40.23(a)(13).

(k)(1) Nothing in this subpart prohibits a person from taking wildlife in defense of life or property if (derived from 5 AAC 92.410):

(i) The necessity for the taking is not brought about by harassment or provocation of the animal or an unreasonable invasion of the animal's habitat;

(ii) The necessity for the taking is not brought about by the improper disposal of garbage or a similar attractive nuisance; and

(iii) All other practicable means to protect life and property are exhausted before the animal is taken.

(2) Wildlife taken in defense of life or property is the property of the State and is not a subsistence taking. A person taking such wildlife is required to salvage immediately the meat, or, in the case of a black bear, wolf, wolverine, or coyote, the hide including claws and surrender it to the State immediately. In the case of brown or grizzly bear, the hide and skull must be salvaged and surrendered to the State immediately. The person taking the wildlife must notify the ADF&G of the taking immediately and must submit a written report of the circumstances of the taking of wildlife in defense of life or property to the ADF&G within 15 days of the taking.

(i) As used in this section, "property" is limited to:

(A) A dwelling, permanent or temporary.

(B) An aircraft, boat, automobile, or other means of conveyance;

(C) A domesticated animal.

(D) Other property of substantial value necessary for the livelihood or survival of the owner. Game taken by hunters is not "property" in the sense of this regulation.

(ii) [Reserved]

(l) Subsistence harvest of Endangered or Threatened species will conform to provisions of the Endangered Species Act, as amended, and its implementing regulations.

(m) [Reserved]

(n) Subsistence harvest of Marine Mammals will conform to the provisions of the Marine Mammal Protection Act, as amended, and its implementing regulations.

(o) [Reserved]

**§ 40.24 Subsistence fishing.**

(a) Regulations in this subsection apply to subsistence fishing for salmon, herring, pike, bottomfish, smelt, and other types of finfish or their parts except halibut, and aquatic plants only on public lands in Alaska (derived from 5 AAC 01.001).

(b) Aquatic plants and finfish other than salmon may be taken for subsistence purposes at any time on any public lands in the state of Alaska by any method unless restricted by the subsistence fishing regulations in this section. Salmon may be taken for subsistence purposes only as provided in this section (derived from 5 AAC 01.005).

(c) The following definitions shall apply to all regulations contained in §§ 40.25 and 40.26 (derived from 5 AAC 39.105(d) and 39.975).

(1) *Abalone iron* is a flat device used for taking abalone and which is more than one inch (24mm) in width and less than 24 inches (61 cm) in length and with all prying edges rounded and smooth.

(2) *Anchor* is a device used to hold a salmon fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor or being secured to another vessel or net that is anchored.

(3) *Bag limit* means the maximum legal take per person or designated group, per specified time period, even if part or all of the fish are preserved.

(4) *Crab* means the following species: *Paralithodes camshatica* (red king crab); *Paralithodes platypus* (blue king crab); *Lithodes couesi; Lithodes aequispina* (brown king crab); all species of the genus Chionoecetes (tanner or snow crab); *Cancer magister* (Dungeness crab).

(5) *Diving gear* is any type of hard hat or skin diving equipment.

(6) *Dipnet* is a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

(7) *Drainage* means all of the waters comprising a watershed including tributary rivers, streams, sloughs, ponds and lakes which contribute to the supply of the watershed.

(8) *Fishing site* means a structure or vessel used by an Alaska Commercial Fisheries Entry Commission permit holder for providing shelter in support of the opeaton of stationary net gear.

(9) *Fishwheel* is a fixed, rotating device for catching fish which is driven by river current or other means of power.

(10) *Freshwater of streams and rivers* means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide.

(11) *Fyke net* is a fixed, funneling (fyke) device used to entrap fish.

(12) *Gear* means any type of fishing apparatus.

(13) *Gill net* is a net primarily designed to catch fish by entanglement in the mesh and consisting of a single sheet of webbing hung between cork line and lead line, and fished from the surface of the water.

(14) *Drift gill net* is a drifting gill net that has not been intentionally staked, anchored or otherwise fixed.

(15) *Set gill net* is a gill net that has been intentionally set, staked, anchored, or otherwise fixed.

(16) *Grappling hook* is a hooked device with flukes or claws and attached to a line and operated by hand.

(17) *Groundfish—bottomfish* means any marine finfish except halibut, osmerids, herring and salmonids.

(18) *Hand troll gear* consists of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing or other types of trolling, and which are

retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical or other assisting device or attachment.

(19) *Herring pound* is an enclosure used primarily to retain herring alive over extended periods of time.

(20) *Hung measure* means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

(21) *Hydraulic clam digger* is a device using water or a combination or air and water to remove clams from their environment.

(22) *Inclusive season dates* means whenever the doing of an act between certain dates or from one date to another is allowed or prohibited, the period of time thereby indicated includes both dates specified; the first date specified designates the first day of the period, and the second date specified designates the last day of the period.

(23) *Lead* is a length of net employed for guiding fish into a seine or set gill net.

(24) *Legal limit of fishing gear* means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of boats in any particular regulatory area, district or section.

(25) *Long line* is a stationary buoyed or anchored line or a floating, free drifting line with lures or baited hooks attached.

(26) *Mechanical clam digger* is a mechanical device used or capable of being used for the taking of clams.

(27) *Mechanical jigging machine* is a mechanical device with line and hooks used to jig for halibut and bottomfish, but does not include hand gurdies or rods with reels.

(28) *Net gear site* means the in-water location of stationary net gear.

(29) *(to) Operate fishing gear* means the deployment of gear in the waters of Alaska, the removal of gear from the waters of Alaska, the removal of fish or shellfish from the gear during an open season or period, or possession of a gill net containing fish during an open fishing period, except that a gill net which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirements.

(30) *Possession limit* means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried or otherwise preserved so as to be fit for human consumption after a 15-day period.

(31) *Power gurdy troll gear* consists of a line or lines with lures or baited hooks which are drawn through the water by a power gurdy.

(32) *Pot* is a portable structure designed and constructed to capture and retain fish and shellfish alive in the water.

(33) *Purse seine* is a floating net designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

(34) *Hand purse seine* is a floating net designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

(35) *Beach seine* is a floating net designed to surround fish which is set from and hauled to the beach.

(36) *Ring net* is a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be non-rigid and collapsible so that when fishing it does not prohibit free movement of fish or shellfish across the top of the net.

(37) *Rockfish* means all species of the genus *Sebastes*.

(38) *Salmon stream* means any stream used by salmon for spawning or for travelling to a spawning area.

(39) *Salmon stream terminus* means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water.

(40) *Scallop dredge* is a dredge-like device designed specifically for and capable of taking scallops by being towed along the ocean floor.

(41) *Seine vessel* means the largest vessel, as determined by keel length, used to operate a seine and the vessel from which the seine is set, and to which the seine is retrieved.

(42) *Shovel* is a hand-operated implement for digging clams or cockles.

(43) *Stretched measure* means the average length of any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet after use, the 10 meshes, when being measured, shall be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements shall be made by the means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under the five-pound weight, except as otherwise provided.

(44) *Trawl* is a bag-shaped net towed through the water to capture fish or shellfish.

(45) *Beam trawl* is a trawl with a fixed net opening using a wood or metal beam.

(46) *Otter trawl* is a trawl with a net opening controlled by devices commonly called otter doors.

(47) *Pelagic trawl* is a trawl where the net, or the trawl doors or other trawl-spreading device, do not operate in contact with the seabed, and which does not have attached to it any protective device, such as chafing gear, rollers, or bobbins, that would make it suitable for fishing in contact with the seabed.

(d) Methods, means, and general restrictions. (1) The bag limit specified herein for a subsistence season for a species and the State bag limit set for a State general season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional fish of that species under any other bag limit specified for a State general season.

(2) Unless otherwise provided in this chapter, the following are legal types of gear for subsistence fishing (derived from 5 AAC 01.010):

(i) Gear specified in definitions in subsection (a)(3).

(ii) Jigging gear which consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and are drawn through the water by hand;

(iii) A spear which is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and is operated by hand;

(iv) A lead which is a length of net employed for guiding fish into a seine or a length of net or fencing employed for guiding fish into a fishwheel, fyke net or dip net.

(3) Gill nets used for subsistence fishing for salmon may not exceed 50 fathoms in length, unless otherwise specified by the regulations in particular areas set forth in this section.

(4) It is prohibited to buy or sell subsistence-taken fish, their parts, or their eggs, unless otherwise specified in this section.

(5) Fishing for, taking or molesting any fish by any means, or for any purpose, is prohibited within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction.

(6) The use of explosives and chemicals is prohibited.

(7) Subsistence fishing by the use of line attached to a rod or pole is prohibited except when fishing through the ice in the Kotzebue-Northern, Norton

Sound-Port Clarence, Yukon, Kuskokwim and Bristol Bay areas.

(8) Each person subsistence fishing shall plainly and legibly inscribe his/her first initial, last name, and address on his/her fishwheel, or on a keg or buoy attached to gill nets and other unattended subsistence fishing gear.

(9) All pots used to take fish must contain an opening in the webbing of a side wall of the pot which has been laced, sewn or secured together by untreated cotton twine or other natural fiber no larger than 120 thread, which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one half of the tunnel eye opening perimeter.

(10) Persons licensed by the State of Alaska under Alaska Statutes to engage in a fisheries business may not receive for commercial purposes or barter or solicit to barter for subsistence taken salmon or their parts. Further restrictions on the bartering of subsistence taken salmon or their parts may be implemented by the Federal Subsistence Board if necessary.

(11) Gill net web must contain at least 30 filaments and all filaments must be of equal diamter, or the web must contain at least six filaments, each of which must be at least 0.20 millimeter in diameter.

(12) Except as provided elsewhere in this regulation, the taking of rainbow trout and steelhead is prohibited.

(13) Fish taken for subsistence use or under subsistence fishing regulations may not be subsequently used as bait for commercial and sport fishing purposes.

(14) The use of live nonindigenous fish as bait is prohibited.

(e) Unlawful Possession of Subsistence Finfish—No person may possess, transport, give, recive or barter subsistence-taken fish or their parts that the person knows or should know were taken in violation of Federal or State statute or a regulation promulgated thereunder (derived from 5 AAC 01.030).

**§ 40.25 [Reserved]**

**§ 40.26 Subsistence shellfish.**

(a) Regulations in this section apply to subsistence fishing on public lands for dungeness crab, king crab, tanner crab, shrimp, clams, abalone and other types of shellfish or their parts. The descriptions of legal types of gear and definitions in § 40.25(a) are applicable to the regulations of this section (derived from 5 AAC 02.001).

(b) Shellfish may be taken for subsistence uses at any time in any area of the public lands by any method unless restricted by the subsistence fishing regulations of this section and § 40.25 (derived from 5 AAC 02.005).

(c) Methods, means, and general restrictions. (1) The bag limit specified herein for a subsistence season for a species and the state bag limit set for a state general season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional shellfish of that species under a subsistence season specified herein may not after that, take any additional shellfish of that species under any other bag limit specified for a State general season.

(2) Unless otherwise provided in this section, the following are legal types of gear for subsistence fishing (derived from 5 AAC 02.010):

(i) Gear specified in § 40.25(a);

(ii) Jigging gear which consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and which are drawn through the water by hand;

(iii) A spear which is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and which is operated by hand;

(iv) A lead which is a length of net employed for guiding fish into a seine or a length of net or fending employed for guiding fish into a fishwheel, fyke net, or dip net;

(3) It is prohibited to buy or sell subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified in this section.

(4) The use of explosives and chemicals is prohibited, except that chemical baits or lures may be used to attract shellfish.

(5) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Bering Sea area.

(6) Each subsistence fisherman shall plainly and legibly inscribe his/her first initial, last name and address on a keg or buoy attached to unattended subsistence fishing gear. Subsistence fishing gear may not display a permanent Alaska Department of Fish and Game vessel license number.

(7) A side wall of all subsistence shellfish pots must contain an opening with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter. The opening must be laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread. Dungeness crab and shrimp pots may have the pot lid tie down straps secured to the pot at one end by untreated cotton twine no larger than 120 thread, as a substitute for the above requirement.

(8) No person may mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(9) In addition to the marking requirements in (5) of this subsection, kegs or buoys attached to subsistence crab pots must also be inscribed with the name or U.S. Coast Guard number of the vessel used to operate the pots.

(10) No more than five pots per person and 10 pots per vessel may be used to take crab, except as specified in subsection 40.26(f).

(11) In the subsistence taking of shrimp in the Southeastern Alaska-Yakutat and Prince William Sound Areas, no person may use more than 10 pots, and no more than 20 pots may be operated from a vessel. In the subsistence taking of shellfish other than shrimp in the Southeastern Alaska-Yakutat Area, no person may operate more than five pots of any type, and no more than 10 pots of any type may be operated from a vessel.

(d) Subsistence Take by Commercial Vessels—No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, tanner crab, or dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered (derived from 5 AAC 02.025).

(e) Unlawful Possession of Subsistence Shellfish—No person may possess, transport, give, receive or barter subsistence taken shellfish or their parts that the person knows or should know were taken in violation of a Federal or State statute or a regulation promulgated thereunder (derived from 5 AAC 02.030).

Dated: June 1, 1990.

**Bruce Blanchard,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 90-13405 Filed 6-7-90; 8:45 am]

BILLING CODE 4310-55-M

federal register

Friday
June 8, 1990

# Part V

# Legal Services Corporation

## Sunshine Meeting

## LEGAL SERVICES CORPORATION

### Presidential Search Committee

### Amended Notice

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** None.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** The meeting is to take place on June 16–17, 1990, commencing at 9:00 a.m. on both days.

**EXPLANATION OF CHANGE:** An agenda item is being added.

**STATUS OF MEETING:** Open [A portion of the meeting has been closed subject to the recorded vote of a majority of the Board of Directors to discuss matters related to Presidential Search as authorized under The Government in the Sunshine Act [5 U.S.C. 552b (c)(2), (6), and (9)(B) and 45 CFR 1622.5 (a), (e), and (g)].

**MATTERS TO BE CONSIDERED:**

1. Approval of Agenda.
2. Approval of Minutes.

—May 20, 1990
—June 4, 1990
—June 11, 1990

3. Review of Presidential Questionnaires.
4. Review of Procedures Relating to the Presidential Search.
5. Interviews of Candidates by the Committee.
6. Selection of Candidates to be Recommended for Interview by the Board of Directors.
7. Consideration of Recommendation for Appointment of Interim President.

**CONTACT PERSON FOR MORE INFORMATION:** Maureen R. Bozell, Executive Office, (202) 863–1839.

**DATE ISSUED:** June 7, 1990.

**Maureen R. Bozell,**

*Corporation Secretary.*

[FR Doc. 90–13506 Filed 6–7–90; 10:39 am]

BILLING CODE 7050–01–M

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