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ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations.

SUMMARY: The Administrative Conference of the United States, at its Twenty-Ninth Plenary Session, adopted three recommendations. Recommendation 84-5, Preemption of State Regulation by Federal Agencies, addresses the subject of preemption of state laws by federal regulatory actions. Recommendation 84-6, Disclosure of Confidential Information Under Protective Order in International Trade Commission Proceedings, concerns the protection of confidential business information disclosed to counsel in antidumping and countervailing duty proceedings. Recommendation 84-7, Administrative Settlement of Tort and Other Monetary Claims Against the Government, offers guidance to agencies on the administrative handling and settlement of claims against the Government under the Federal Tort Claims Act and other claims statutes.

Recommendations of the Administrative Conference are published in full text in the **Federal Register** upon adoption. Complete lists of recommendations and statements, together with the texts of those deemed to be of continuing general interest, are published in the Code of Federal Regulations (1 CFR Parts 305 and 310).

DATES: These recommendations were adopted December 6-7, 1984 and issued December 19, 1984.

FOR FURTHER INFORMATION CONTACT: Richard K. Berg, General Counsel (202-254-7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571-576. The Conference studies the efficiency, adequacy and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States. (5 U.S.C. 574(1).)

At its Twenty-Ninth Plenary Session, held December 6-7, 1984, the Assembly of the Administrative Conference of the United States adopted three recommendations.

In Recommendation 84-5, the Conference addresses the subject of preemption of state laws and regulations by federal agencies. The Conference urges that Congress unambiguously state its intention regarding preemption whenever a regulatory statute is enacted. In those instances where federal agencies must deal with preemption issues, the Conference recommends that the agencies (i) establish procedures that will ensure adequate and explicit consideration of preemption matters in agency policy-making, (ii) avoid conflict between state and federal regulatory requirements through the use of informal dialog with state authorities, and (iii) provide to states notice and an adequate opportunity to participate in agency proceedings that may result in preemption of the states' laws or rules.

Recommendation 84-6 concerns the disclosure to counsel, under protective order, of confidential business information submitted to the International Trade Commission (ITC) in antidumping and countervailing duty injury proceedings. To make its findings in these proceedings, the ITC depends heavily on voluntary submission of information by American companies; however, the risk that such information may be "leaked" to the companies' competitors when it is disclosed under protective order may discourage such voluntary cooperation. The Conference recommends various measures to limit the exposure of confidential business information and to strengthen the obligation of attorneys receiving the information under protective order to prevent unauthorized disclosures. The recommendation also proposes that the ITC (and, in one case, the Court of International Trade) afford greater protection to the interests of submitters of confidential information, by providing greater notice of the likelihood and extent of possible disclosure and by assuring appropriate opportunities for submitters to object to such disclosure. In addition, the Conference identifies certain areas in which the ITC might consider increasing the information disclosed under protective order.

Recommendation 84-7 sets forth guidance for agency claims officers and attorneys regarding the presentation, investigation and administrative assessment of monetary claims against the Government under the Federal Tort Claims Act, meritorious claims statutes, and similar laws. The recommendations call for minor adjustments in the FTCA, certain agency practices, and the Department of Justice's regulations in order to enhance usage of the administrative claims process by encouraging a perception among claimants that it is fair and effective.

The Conference's recommendations call on agencies to provide greater guidance to claimants about their rights, to help claimants to avoid running afoul of technical requirements, to promote mutual access to relevant information, to determine the merits and monetary value of a claim fairly and objectively, and to avoid reliance on technical defenses that do not affect the merits. In addition, the Conference calls for Congress to make several changes in the FTCA's statute of limitations in order to avoid injustice, and systematically to adjust ceilings on agencies' authority for settling claims where inflation has rendered present limits obsolete.

The transcript of the Plenary Session will be available for public inspection at the Conference offices at Suite 500, 2120 L Street, NW., Washington, D.C.

Lists of Subjects in 1 CFR Part 305

Administrative practice and procedure, Preemption, of State law, Foreign trade, Tort claims.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The table of contents to Part 305 of Title 1 CFR is amended to add the following new sections:

2. Section 305.84-5 is added to Part 305 as follows:

§ 305.84-5 Preemption of State Regulation by Federal Agencies (Recommendation No. 84-5).

States have the power to regulate many forms of conduct. Each state must have broad power to regulate in ways that it believes to be in the best interests of its citizens, subject to the limitations stated in the federal and state constitutions. The nature and magnitude of the problems that require regulatory action vary substantially among the states, and state governments are normally in a better position than the federal government to determine the types of regulations that will serve the interests of the states' citizens. States sometimes have an incentive, however, to impose regulations that advance state interests at the expense of other states' interests or of national interests.

Federal courts have applied the Commerce Clause to limit state power to affect national interests only in those few cases where the state action clearly discriminates against interstate commerce or protects in-state economic interests from out-of-state competition. Institutionally, however, courts are ill-suited to attempt to limit state power to harm national interests when state regulation furthers in-state interests of one type while it simultaneously frustrates a national interest of a different type.

Congress can limit state power to harm national interests by (i) expressing in a statute a congressional intent to occupy a field completely, (ii) explicitly preempting the specific type of state regulation at issue, or (iii) imposing a federal regulatory duty directly in conflict with a duty imposed by a state. The conflict, delay, and uncertainty of outcome that occurs when preemption questions must be resolved by the judiciary can be avoided if Congress addresses preemption issues clearly and explicitly when enacting regulatory statutes. The congressional agenda is so crowded, however, that Congress cannot be expected to consider explicitly and in detail all of the forms of state regulation that may harm the national interest. Congress experiences particular difficulty anticipating and resolving directly the many arguable conflicts between the national interest and new state regulations issued in the aftermath of a federal decision to deregulate an area of conduct.

Because of the limited ability of Congress and the judiciary to act as checks on state regulation that harms the national interest, states possess, in practice, the power to make regulatory choices that produce net benefits within the state but that produce substantial net detriments on a national level. Without an additional federal constraint on state regulatory power, states can be expected to regulate in this manner frequently.

Federal agencies can play a valuable role in supplementing judicial and congressional constraints on state regulation. Courts regularly affirm federal agency actions that preempt state regulations when the preemptive effect of the federal action is no broader than can be justified by the evidence of need for preemption. Federal agencies sometimes consider preemption of a state law or regulation, however, without providing affected states notice and an opportunity to participate effectively in the agencies' proceedings.

A federal agency considering a regulatory action—whether to expand or reduce regulatory constraints—should be sensitive both to the need to preempt state laws that seriously disrupt the federal program, and to the need to take into account the states' special needs and circumstances.

Recommendation

1. Congress should address foreseeable preemption issues clearly and explicitly when it enacts a statute affecting regulation or deregulation of an area of conduct.

2. Each federal agency should establish procedures to ensure consideration of the need to preempt state laws or regulations that harm federally protected interests in the areas of regulatory responsibility delegated to that agency by Congress, and each agency should clearly and explicitly address preemption issues in the course of regulatory decision-making. Particularly in the circumstances where a federal regulatory program is being reduced or eliminated (deregulation), an agency needs to be alert to the form and magnitude of state regulation that may exist—or may be quickly adopted to fill a perceived void left by the diminished federal regulation.

3. When a federal agency foresees the possibility of a conflict between a state law or regulation and federally protected interests within the federal agency's area of regulatory responsibility, the agency should, when practicable, engage in informal dialogue with state authorities in an effort to avoid such a conflict.

4. When a federal agency proposes to act through agency adjudication or rulemaking to preempt a state law or regulation, the agency should attempt to provide all affected states, as well as other affected interests, notice and an opportunity for appropriate participation in the proceedings.

3. Section 305.84-6 is added to Part 305 as follows:

§ 305.84-6 Disclosure of Confidential Information Under Protective Order in International Trade Commission Proceedings (Recommendation No. 84-6).

This recommendation concerns the protective orders practice of the United States International Trade Commission in antidumping and countervailing duty proceedings. Under the Trade Agreements Act of 1979, the Commission has authority to release to counsel, under protective order, certain confidential business and financial information that is submitted to it by parties in such proceedings.

The export to the United States of goods at less than their fair value (called "dumping") and the subsidization by foreign governments of exports of their countries' products to the United States are treated by American law as unfair methods of international trade. If dumped or subsidized imports are found to cause or threaten material injury to an industry in the United States, the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979, provides for imposition of a duty in an amount intended to offset the margin of dumping or subsidy. There must be two determinations: (1) Whether the imports in question have been dumped or subsidized, which is decided by the International Trade Administration of the Department of Commerce ("ITA"), and (2) whether the imports are causing or threatening injury to an industry in the United States, which is decided by the International Trade Commission ("ITC").

The injury proceeding at the ITC is substantially the same for both types of cases, known respectively as antidumping and countervailing duty proceedings. The ITC conducts a preliminary investigation in which it must determine within 45 days whether there is a "reasonable indication" that the injury test will be met. If its determination is negative, the entire antidumping or countervailing duty proceeding (including the portion conducted by the ITA) is terminated. If the ITC's determination is affirmative, and the ITA has made an affirmative determination that the imports are being dumped or subsidized, the ITC conducts a final investigation to reach a determination, which usually must be made within 120 days, whether the imports are threatening or causing injury to an industry in the United States.

In both stages of the proceeding, the ITC gathers extensive information from American producers, importers, and purchasers of the products in question. The Trade Agreements Act of 1979 authorizes the ITC to make available, under protective order, confidential business information that it has received in these proceedings. Under this authority, the ITC releases the confidential data of one party to counsel for other parties. In almost all cases those other parties, to whose counsel the confidential information is disclosed, are business competitors of the party that submitted the information. The only companies whose confidential information is disclosed are those American companies that complain of injury from the alleged unfair import practices. Confidential data concerning their prices and cost of production can be released to counsel for both their domestic competitors and their foreign competitors. In addition, all confidential information submitted to the ITC, regardless of the submitter's identity, may ultimately be disclosed, under judicial protective order, in proceedings to review ITC determinations before the Court of International Trade ("CIT").

Throughout its proceedings, the ITC devotes great care to maintaining the security of confidential business information which is submitted to it or is gathered in its investigations. Agency regulations provide procedures for requesting confidential treatment of proffered information, and the staff in practice accords confidential treatment without specific request to information acquired in response to questionnaires and other investigative inquiries. The record of each antidumping and countervailing duty injury proceeding is divided into public and nonpublic sections. Pleadings, staff documents, and ITC opinions are prepared and submitted under procedures designed to avoid the public disclosure of confidential information.

The principal concern here is not with the agency's internal procedures, but with the potential misuse of parties' information which has been received under protective order by lawyers or other parties. A particular concern is that such information will, willfully or inadvertently, be passed along by a lawyer to his client, who then can make competitive use of it against the American company that submitted it. Though there is little hard evidence of such improper disclosure, there is much suspicion that it occurs. It is believed that the perceived risk of wrongful disclosure generates a chilling effect which, by discouraging voluntary submission of essential information, hampers the International Trade Commission's ability to do its job. The ITC's responsibility is to determine whether the allegedly unfair imports are threatening or causing "injury"—not simply injury to individual American companies as such, but injury to the entire "industry" affected by competition from the imports. If American companies fear that their confidential business data will leak to their competitors, and for that reason refuse to submit such information, the Commission will be unable to assemble the complete industry figures it needs for a soundly-based determination of injury. Although the agency has the power to subpoena the necessary information, the short statutory deadlines it must meet and its own limited resources to procure enforcement of subpoenas make heavy reliance on voluntary cooperation a practical necessity.

Another area of concern arises from the circumstance the existing ITC practices do not adequately inform submitters of information of the high likelihood that confidential price and cost of production information will be disclosed, nor of the possibility that other confidential information may be disclosed, without further warning, in review proceedings before the CIT.

These recommendations propose that the ITC (and, in one case, the CIT) establish a series of measures intended to reduce the risks of disclosure, protect submitters and safeguard the process of making disclosure of price and cost of production data. In some circumstances, these measures would preclude disclosures that are now permitted. No recommendation is made to reduce the categories of information that are required by statute to be disclosed. Indeed, the ITC might appropriately consider some enlargement of the classes of information it will release under protective order to facilitate more meaningful analysis of the information now disclosed. Any broader disclosure should be accompanied by the safeguards herein recommended, and should be provided only if the Commission's investigative and decisional processes will clearly be improved thereby.

Recommendations

A. Limiting the Exposure of Confidential Information

1. The International Trade Commission should provide for the disclosure of confidential information during the preliminary investigation phase of its antidumping and countervailing duty injury proceedings only in circumstances in which disclosure is important to achieving the limited purposes of the preliminary investigation itself.

2. Confidential information submitted by a domestic producer party should not be disclosed to counsel for any other domestic party (except a United States importer which is an interested party within 19 U.S.C. 1677(9)(A)).

3. The Commission by regulation or policy statement should define and specify the kinds of data which are disclosable as "information concerning the domestic price and cost of production of the like product."

B. Protection of Submitters' Interests

1. The Commission's questionnaires should more clearly inform petitioners and supporters of the petition about the likelihood that their confidential price and cost of production information (whether submitted in response to the questionnaire or otherwise) will be disclosed by the Commission under protective order to counsel for competitors of the submitter.

2. The Commission's questionnaires and other inquiries, by which confidential information is requested from parties and nonparties, should be accompanied by a statement that all such information of whatever kind (not merely that in the price and cost of production categories) is subject to disclosure by the Court of International Trade, under protective order, to counsel for any party to a judicial review proceeding involving such information.

3. Although in practice the Commission does not require the submitters of responses to questionnaires and follow-up inquiries to make specific request that the information submitted be treated as confidential by the Commission, its regulations (19 CFR 201.6) do require such a specific request. The regulations should be modified to reflect the practice.

4. The Commission's regulations should be conformed to 19 U.S.C. 1677f(b), which requires the Commission to treat as confidential any information so designated by the submitter, unless the Commission requests an explanation and is unpersuaded by it, in which event it must return the information to the submitter.

5. The Commission should establish by regulation an informal procedure whereunder the submitter may object to disclosure of its information under protective order, except in cases of extraordinary urgency. Commission regulations should also provide that, when the submitter is given notice of an application for disclosure of its information, it also be advised specifically of the procedures whereunder it may object.

6. With respect to a requirement that the requester show a need for confidential information before it can be released under protective order, for the ordinary case the Commission should continue its present practice whereunder a simple statement of need, rather then a showing of need, suffices. Where extraordinary sensitivity or other unusual considerations are demonstrated by the submitter, the Commission should require an actual showing of substantial need before releasing the information. The Commission's regulation (19 CFR 207.7(a)), which purports to require the requester to "demonstrate[ ] a substantial need for the information in the preparation of his case" in all instances, should be modified accordingly. In all cases the statement of need should be accompanied by a statement of the requester's intent to participate actively in the proceeding.

7. The Court of International Trade should seek to provide in proceedings for judicial review of ITC injury determinations in antidumping and countervailing duty cases, that nonparty submitters be given notice and a meaningful opportunity to object to the release under protective order of any confidential information which they had

submitted to the International Trade Commission.

C. Counsel's Responsibilities Under Protective Orders

The Commission's regulations and protective orders should provide by specific language that the attorney who has received information under protective order may be personally liable to sanctions (1) for a breach of the protective order by other persons—such as attorneys, experts, and support staff working on the case—to whom the attorney, under the authority of the protective order, has divulged the confidential information or (2) where the attorney has been shown to have been negligent in the custody of such information and unauthorized disclosure has resulted.

D. Possible Broader Disclosures

1. Confidential price and cost of production information submitted to the Commission by importer and foreign parties to the investigation should be made available under protective order to counsel for domestic parties to the investigation, or at least to those who support the petition.

2. The Commission should consider disclosing under protective order further kinds of confidential information pertaining to price and cost production, beyond what is now disclosed, to the extent such further information can facilitate more meaningful analysis of the kinds of information that are now disclosed.

3. The Conference takes no position on whether or not the Commission should consider disclosing confidential information in categories other than price and cost of production. If the Commission does consider such disclosure, it should make such disclosure only (a) in categories where party analysis of such information is likely to assist the Commission's investigation without impeding its fulfillment of statutory deadlines, (b) in cases in which the requester shows a substantial need for access to the information and (c) under additional safeguards including as appropriate those recommended herein.

4. Section 305.84–7 is added to Part 305 as follows:

§ 305.84–7 Administrative Settlement of Tort and Order Monetary Claims Against the Government (Recommendation No. 84–7).

In the Federal Tort Claims Act and dozens of other statutes,[1] Congress has authorized agencies to provide compensation for losses occasioned by a variety of agency actions. The FTCA, the centerpiece of this array, essentially waives the government's sovereign immunity to damage actions arising out of the negligent or otherwise wrongful acts committed by federal employees while acting within the scope of their employment. Previously Congress had been burdened by numerous private bills to redress government torts. The FTCA sought initially to shift to the courts primary responsibility for determining whether redress was warranted. In 1966 the FTCA was amended to transfer much of that load to agencies. At that time, Congress required claimants to present claims to the responsible agency as a prerequisite to suit and gave the agency a minimum of six months in which to act upon them. The agencies were also given an unprecedented degree of settlement autonomy. The FTCA requires that the exercise of this authority be "in accordance with regulations prescribed by the Attorney General," but does not subject it to detailed procedural mandates apart from the requirement that the Department of Justice approve large settlements.

This relatively inconspicuous administrative process has taken on considerable significance in dealings between agencies and individual claimants, and could gain even more if Congress acts to displace suits against individual federal officials by an expansion of the government's liability under the FTCA.[2] Available information suggests that the administrative process resolves a high proportion of claims worth paying at the same time as it exposes the unmeritorious character of many of the thousands of claims filed annually. In both ways, it effectively replaces litigation with a largely informal, relatively open, and potentially nonadversarial means of dispute resolution.

Although the present system seems generally to be serving Congress' purposes, it has not been without difficulties. In particular, the extent to which administrative settlement should be taken as an autonomous dispute resolution process, is unclear. In some agencies the claims officer approximates a neutral decisionmaker, objectively appraising something in the nature of an inchoate entitlement. Other agencies view their claims officers as adversaries of the claimant engaged in tactical maneuvers that are preludes to litigation or to bargaining for a financially advantageous settlement of sustainable claims.

The Conference, though not recommending any radial restructuring of the agency claims process, believes that this ambiguity has sometimes produced undesirable results. Inappropriately adversarial responses to technical deficiencies, restrictive policies on information disclosure in connection with pending claim, and less than fully fair and objective approaches to determining the merits and monetary value of a claim do not serve the purposes of the FTCA, nor do they enhance confidence in claims officers' determinations. Claimants, who may obtain a trial *de novo* before a federal judge after a wait of only six months, are finding the judiciary to be increasingly sympathetic, perhaps in part because some of the judges doubt the fairness and efficiency of some of the agencies' claims handling. To further administrative effectiveness, the Conference recommends the following fine-tuning of the FTCA, of certain agency practices, and of the Department of Justice's regulations.

Recommendations

A. Agency Exercise of Settlement Authority

1. *Providing Guidance to Claimants.* (a) Agency claims officers, as part of their duties, should take reasonable steps to save a claimant who has come forward with a potentially deserving claim from innocently failing to perfect a valid statutory demand, committing technical error, or running afoul of a statute of limitations. Among other things, claims officers should promptly advise claimants of formal deficiencies so as to give claimants an opportunity to cure them. Further, in the case of deficiencies relating solely to the requirements of the Attorney General's or agency's regulations, as opposed to jurisdictional requirements of the FTCA itself, the agency should consider extending the claimant an opportunity to cure such deficiencies for a reasonable time beyond the ordinary limitations period.

(b) Each agency General Counsel's office should compile and publish in the CFR a list briefly describing statutes under which the agency is authorized to entertain monetary claims and the name and telephone number of the agency personnel in charge of each program. In appropriate circumstances, claims officers should make a copy of the list available to claimants.

2. *Filing the Claim.* (a) The Attorney General should amend his regulations to treat an FTCA administrative claim as still timely though received after expiration of the statute of limitations, provided that the claimant can demonstrate that he or she sent it by an ordinarily effective means of delivery before expiration of that period.

(b) Agencies should require claims officers to advise claimants that the absence of a sum certain for all categories of claims may preclude their

[1] "Meritorious claims" statutes allowing agencies to entertain some kinds of claims even where no fault can be shown, include the Military and Foreign Claims Acts and statutes covering certain actions of the Departments of Agriculture and Justice, NASA, the NRC, the Peace Corps, and the Postal Service. Other ancillary statutes, like the Suits in Admiralty Act, Public Vessels Act, Copyright Infringement Act, Trading with the Enemy Act, and Swine Flu Immunization Act, complement the FTCA, for instance by addressing claims likely to be exempt from that Act.

[2] See ACUS Recommendation 82–6, Federal Officials' Liability for Constitutional Violations.

consideration by both agency and court, and that, subject to timely amendment and the existing statutory exceptions, the amount of the administrative claim constitutes a ceiling on the damages that may later be sought in court.

3. *Substantiation of Claims.* Where exchanges with a claimant reveal an insufficiency of information submitted in support of the claim, agency claims officers should promptly and clearly advise the claimant whether the continued nonproduction of designated information will, in the officer's view, warrant dismissal of the claim as invalid because of incomplete documentation.

4. *Access to Information.* Agencies should endeavor, particularly when a claimant seeks access to his or her claim file or to other information relating to a pending claim, to promote a mutually free and open exchange of relevant information. Agencies should consider release even when applicable statutes would not require it if more extensive disclosure might advance settlement. Specifically, agency claims officers should not routinely regard the information they assemble in connection with an administrative tort claim as falling within the government's executive privilege for deliberative materials, or the attorney-client, expert witness, or qualified attorney work product privileges, and in appropriate circumstances claims officers should be prepared to disclose information falling within those privileges.

5. *Claims Decisions.* (a) Agencies should give a brief statement of the grounds for denial whenever an FTCA or other claim is rejected.

(b) An agency claims officer's ultimate goal should be a fair and objective assessment of the merits of a claim and of its monetary worth. In addition, the Department of Justice should not exercise its statutory approval authority over large administrative settlements in a manner that would tend to discourage claims officers from making serious efforts to reach a fair and objective settlement with a deserving claimant.

6. *Reconsideration.* (a) Claim denial letters should inform claimants that they may request the agency's reconsideration of its denial, and that such a request extends the six month waiting period before suit may be filed in federal district court.

(b) In cases where the claimant communicates with the claims officer following final denial, the officer should promptly indicate whether or not, in his or her view, the communication constitutes a request for reconsideration and state specifically the procedural implications of that determination.

B. Statutory Changes

1. Congress should conduct a comprehensive reexamination of the meritorious and other ancillary claims statutes in force to ensure that each is warranted and that, together, they form a coherent whole both on their own terms and in relation to the FTCA. Congress should systematically raise ceilings on all agency authority to settle claims where inflation has rendered obsolete the present levels.

2. Congress should amend 28 U.S.C. 2401(b) to provide that, where a claim has been filed with the wrong agency in a timely manner and transferred to the appropriate agency, the original date of filing will be used for determining timeliness. To help ensure that agencies have an adequate and predictable length of time to investigate and consider claims, Congress should provide that the six-month period given the agencies for that purpose not commence until the claim has been received by the appropriate agency.

3. Congress should further amend 28 U.S.C. 2401(b) to provide that, where an otherwise timely damage action against a person for whose tortious conduct Congress has made the federal government exclusively liable is converted into a suit against the government under the FTCA and then dismissed for failure to file a prior administrative claim, the plaintiff shall have 60 days from the date of such dismissal or two years from the date the claim arose, whichever is later, in which to file such a prior claim.

(5 U.S.C. 571–576)

Dated: December 19, 1984.

Richard K. Berg,

General Counsel.

[FR Doc. 84–33356 Filed 12–21–84; 8:45 am]

BILLING CODE 6110-01-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems; Correction

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: The final regulations to update 5 CFR Part 532, Prevailing Rate Systems, published in the **Federal Register** on Friday, September 21, 1984, (49 FR 37055) omitted several key words that could cause agencies to misinterpret these instructions. The attached correction will rectify this matter.

DATE: Effective October 22, 1984.

FOR FURTHER INFORMATION CONTACT: Richard W. Newbold, (202) 632–7830.

Office of Personnel Management.

Donald J. Devine,

Director.

PART 5—[AMENDED]

Accordingly, OPM is correcting 5 CFR 532.511(c) published in the **Federal Register** of September 21, 1984 (49 FR 37055), to read as follows:

§ 532.511 Environmental differentials.

* * * * *

(c) *Basic pay.* Environmental differential pay is part of basic pay and shall be used to compute premium pay (pay for overtime, holiday, or Sunday work), the amount from which retirement deductions are made, and the amount on which group life insurance is based. It is not part of basic pay for purposes of lump-sum annual leave payments and severance pay nor is its loss an adverse action.

(5 U.S.C. 5343)

[FR Doc. 84–33389 Filed 12–21–84; 8:45 am]

BILLING CODE 6325-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

Export and Import of Nuclear Equipment and Material

Correction

In FR Doc. 84–31548, beginning on page 47191 in the issue of Monday, December 3, 1984, make the following corrections:

1. On page 47197, in the first column, in § 110.1, the second word in the fifth line of paragraph (a) should read "of".

2. Also on page 47197, in the second column, in § 110.2, the last word in the sixth line of the definition for "Person" should read "any".

3. On page 47199, in the third column, in § 110.25, the second word in the eleventh line of paragraph (b) (the ninth line of the third column) should read "machining".

4. On page 47202, in the second column, in § 110.50, the last word in the eighth line of paragraph (b)(3) should read "licensee".

5. Also on page 47202, in the third column, the last word in the heading of § 110.53 should read "inspections".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-ASO-29]

Alteration of Transition Area, Eglin AFB, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the description of the Eglin AFB, Florida, transition area by revising the geographical coordinates of five airports and the designator of an off-shore warning area. These editorial corrections will not result in a significant change in airspace.

DATES: Effective date: 0901 G.m.t., April 11, 1985. Comments must be received on or before March 11, 1985.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

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

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves editorial changes to correct deficiencies in the present description of the Eglin AFB, Florida, transition area, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to revise the geographical coordinates of five airports upon which the Eglin AFB, Florida, transition area is predicated. In addition, the designator of an off-shore warning area, which is excluded from the transition area, has been changed from W-151, to W-151A. This amendment will reflect this change also. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984.

Under the circumstances presented, the FAA concludes that there is a need to amend the description of the Eglin AFB, Florida, transition area so that it is technically correct. The changes are so minor and nonsubstantive, I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Eglin AFB, Florida, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, as follows:

Eglin AFB, FL.—[Revised]

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Eglin AFB (Lat. 30°29'12"N., Long. 86°31'34"W.), Eglin AF Aux No. 3 (Duke Field) (Lat. 30°39'06"N., Long. 86°31'23"W.), and Eglin AF Aux No. 9 (Hurlburt Field) (Lat. 30°25'38"N., Long. 86°41'22"W.), within a 5-mile radius of Destin-Fort Walton Beach Airport (Lat. 30°24'00"N., Long. 86°28'18"W.); excluding the portions within W-151A, the Crestview, FL, transition area, and a 1.5-mile radius of Fort Walton Beach Airport (Lat. 30°24'22"N., Long. 86°49'45"W.)

((Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

Issued in East Point, Georgia, on December 12, 1984.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 84-33292 Filed 12-21-84; 8:45 am]

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CIVIL AERONAUTICS BOARD

14 CFR Part 271

[ER-1398; Economic Regs. Enactment of Part 271; Docket 39041]

Guidelines for Subsidizing Air Carriers Providing Essential Air Transportation

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB adopts guidelines to be used in establishing the amount of subsidy needed to ensure the continuation of essential air transportation at eligible points. The guidelines are required by the Small Community Air Service section of the Federal Aviation Act.

DATES: Adopted: November 28, 1984; Effective: January 25, 1985.

FOR FURTHER INFORMATION CONTACT: John R. Hokanson, Chief, Air Carrier Subsidy Need Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5368; or Joanne Petrie, Office of the Assistant General Counsel for Regulations and Enforcement, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-4723.

SUPPLEMENTARY INFORMATION:

Background

Under section 419 of the Federal Aviation Act (49 U.S.C. 1389), communities that qualify as eligible points are guaranteed at least essential air transportation. Section 419 authorizes the Board to pay a subsidy to an airline to provide the required level of essential air service in cases where no carrier will provide that service subsidy-free. Paragraph (d) of section 419 directs the Board to issue guidelines for establishing subsidy rates.

By EDR-415, 45 FR 83254, December 18, 1980, the Board proposed the